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## **INTRODUCTION**

In accordance with the City Auditor's 1993-94 Audit Workplan, we have audited the city of San Jose Workers' Compensation Program. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

The City Auditor's Office thanks the Risk Management unit, specifically the Risk Manager, the Workers' Compensation Manager, and the entire staff of the Workers' Compensation Program in the Risk Management unit, who gave their time, information, insight, and cooperation for this audit.



## **SCOPE AND METHODOLOGY**

This is the last of three audit reports on the city of San Jose (City) Workers' Compensation Program. This report will address cost containment methods for the Program. Our methodology included interviews with City personnel in Workers' Compensation, Finance Department, Human Resources, Streets and Parks, and at the Airport, Fire, and Police Departments. In addition, we

- Conducted interviews with industry experts;
- Reviewed relevant articles and professional publications;
- Surveyed other jurisdictions;
- Reviewed claims listings;
- Analyzed summary and detail data reports;
- Assessed internal policies and procedures for compliance with state requirements; and
- Performed a statistical sample of individual claims in the Workers' Compensation claims database.

In July 1991, Workers' Compensation acquired a computer system with a claims management database. The statistical sample mentioned above was performed to test the integrity and accuracy of information in the claims database and to analyze the efficiency and effectiveness of claims management.

## **BACKGROUND**

### **Department Mission**

The mission of the Finance Department in administering the Workers' Compensation Program within its Risk Management unit is *"to operate a self-insured program providing State-mandated benefits to City employees for work-related injuries and illnesses more economically than is possible through a State-insured program."*

In addition, the specific goals of the Risk Management unit are

*TO serve both the public and the City organization by identifying risks and minimizing or transferring those risks in order to protect the assets of the City and to preserve the well-being of citizens and City employees.*

*TO uniformly provide Workers' Compensation Benefits in accordance with the State of California Labor Code and in conjunction with the Memorandums of Agreement as well as other applicable City policies and procedures. These benefits are to be provided while exercising fairness in working with all parties in a timely, cost-effective, and professional manner.*

### **Department Organization**

The Risk Management unit of the Finance Department administers the Workers' Compensation Program. Chart I shows the organization of the unit as of June 1994.

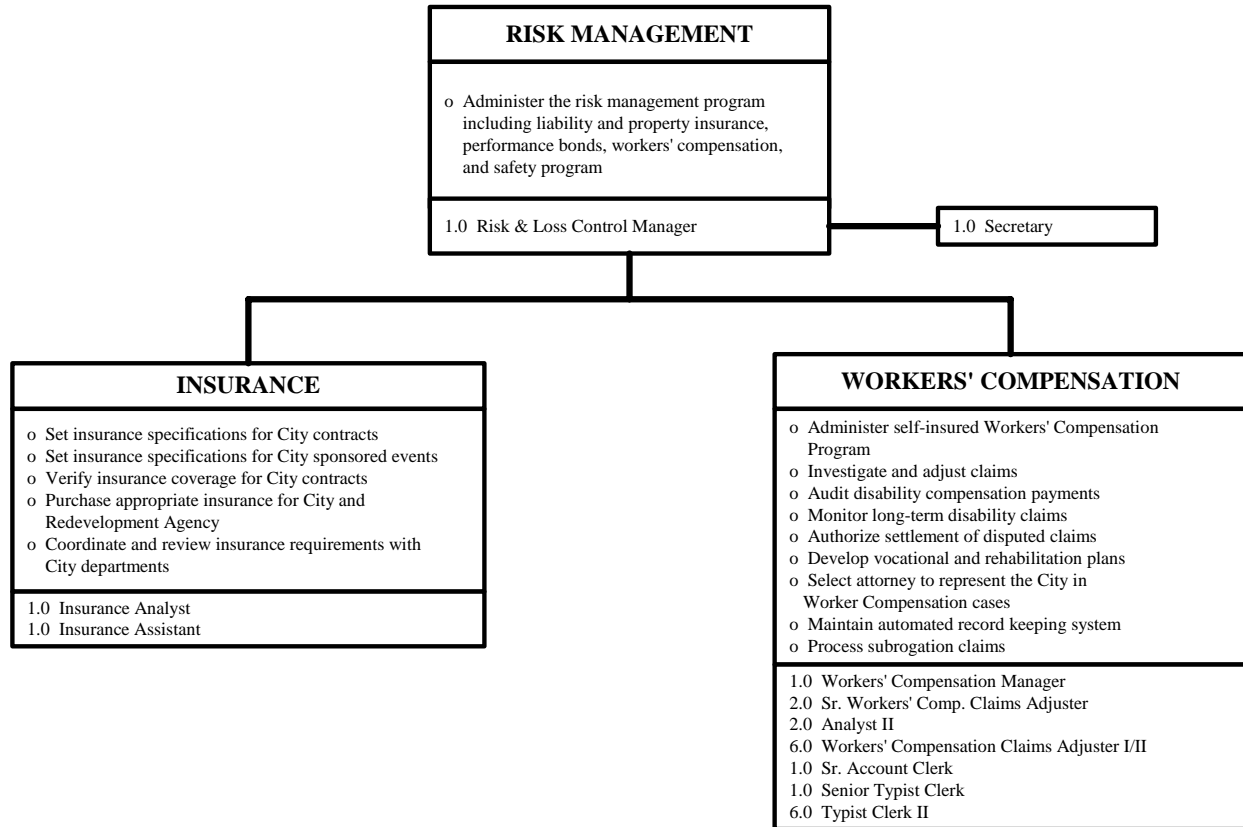
# CHART I ORGANIZATION CHART

**CITY OF SAN JOSE**

Finance Department

Function and Organization Chart

Date: June 1994



A new management team has been put into place over the past few years. The risk manager position had been vacant for nearly two years when it was filled in July 1992. The Workers' Compensation manager position was vacant for almost one and a half years before it was filled in June 1991. In addition, the director of Finance position was vacant for a portion of this period.

### **History**

California first dealt with the problem of uncompensated work injuries in 1911 when the Roseberry Act was adopted which provided employers a voluntary plan of compensation benefits. In 1913, the Boynton Act superseded the Roseberry Act by making it mandatory for employers to provide compensation. The Boynton Act, as amended and codified, is the one in force today. Since its enactment, California workers have been entitled to medical treatment and compensation payments for industrial injuries.

According to Jeffrey V. Nackley's Primer on Workers' Compensation,

*Workers' compensation is considered a beneficial system and remedial in character. Accordingly, it is liberally construed in favor of the intended beneficiaries. Liberal construction does not mean that courts are free to deviate from plainly stated legislation but it does mean that ambiguities in statutes will be resolved in favor of coverage and that otherwise valid claims will not be denied on the basis of technicalities.*

Employers within the workers' compensation system must comply with workers' compensation law by either obtaining insurance or, where permitted, insuring themselves. All employers are required to abide by the workers' compensation laws of the state of California and must follow the pronouncements of the Workers' Compensation Appeals Board (WCAB) in rating permanent disability claims and handling disputed claims. The WCAB must approve all

permanent disability awards. There are three options available to employers seeking workers' compensation coverage: State Compensation Insurance Fund, private insurance, and self-insurance.

### **The Five Major Benefits**

The California Workers' Compensation Act provides for five major benefits.

1. **Medical Care** - The injured employee is eligible for all reasonable medical care necessary to cure or treat an injury.
2. **Temporary Disability (TD)** - The injured worker is also entitled to a TD benefit, which is the wage loss benefit payable during medical practitioner-authorized absence from work.
3. **Permanent Disability (PD)** - The injured employee may also be entitled to a PD benefit, which is a benefit predicated on the reduction of the worker's ability to compete for a job in the open market.
4. **Vocational Rehabilitation** - Should the worker be unable to return to his/her employment, he/she may be entitled to vocational rehabilitation benefits which include continued payment of any necessary medical expenses, vocational training under an approved plan, payment of maintenance allowances while training, and additional living expenses necessitated by the plan.
5. **Death Benefit** - Should death ensue as a result of an injury that is found to be compensable under the compensation laws, the deceased's family may be entitled to death benefits and burial expenses.

### **Types of Claims**

There are four types of claims. They are information-only, medical-only, indemnity, and death.

**Information-Only Claims.** Information-only claims are filed to document an injury or illness when an employee does not plan to seek medical attention (e.g., work-related exposure to communicable diseases, toxic substances, or smoke from fires). The purpose of filing a claim is to document the incident in case disease or injury develops at a later date that could be related. Neither the City nor the employee incurs any costs and no reserve amount is required.

**Medical-Only Claims.** Medical-only claims are filed for work-related injuries or illnesses for which lost time does not exceed three days; the City as the employer pays all costs of medical treatment. A beginning reserve amount of \$2,000 is automatically assigned to all medical-only claims.

**Indemnity Claims.** Indemnity claims are filed for a work-related injury or illness which normally results in loss of time from work. The employee is compensated for lost time and all medical costs of the injury or illness. The two major types of indemnity claims are TD and PD. Current workers' compensation law provides for a maximum of \$406 per week for TD and a maximum of \$168 per week for PD.

- *Temporary Disability.* Employees with work-related illnesses or injuries receive a state-mandated TD amount of \$406 maximum per week. In the City, negotiated memoranda of agreement provide additional compensation in the form of a disability leave of absence or disability leave supplement (DLS) when employees are on TD. Sworn personnel receive TD of \$406 per week and the DLS to equal 100 percent of their regular salaries, while non-sworn receive benefits equal to 85 percent of their salaries. TD and DLS are paid out of departments' personal services budgets, not the Workers' Compensation Fund. Adjusters reserve for the ultimate estimated cost of these claims including TD but not including DLS.
- *Permanent Disability.* Most kinds of compensation available in workers' compensation systems are attempts to compensate for loss of either earnings or earning capacity and are usually paid or

accrued weekly. The basis for an award of compensation is the worker's earnings at the time of injury or death and the fact that it was work-related, not the nature or location of the injury or the manner of inception of the disease.

TD is calculated using the worker's weekly wage at the time of injury or death. Compensation for PD is based on the state of California's Schedule for Rating Permanent Disabilities. The schedule rates a disability based on such factors as the claimant's age, occupation, and extent of injury to evaluate his or her ability to compete in the open labor market.

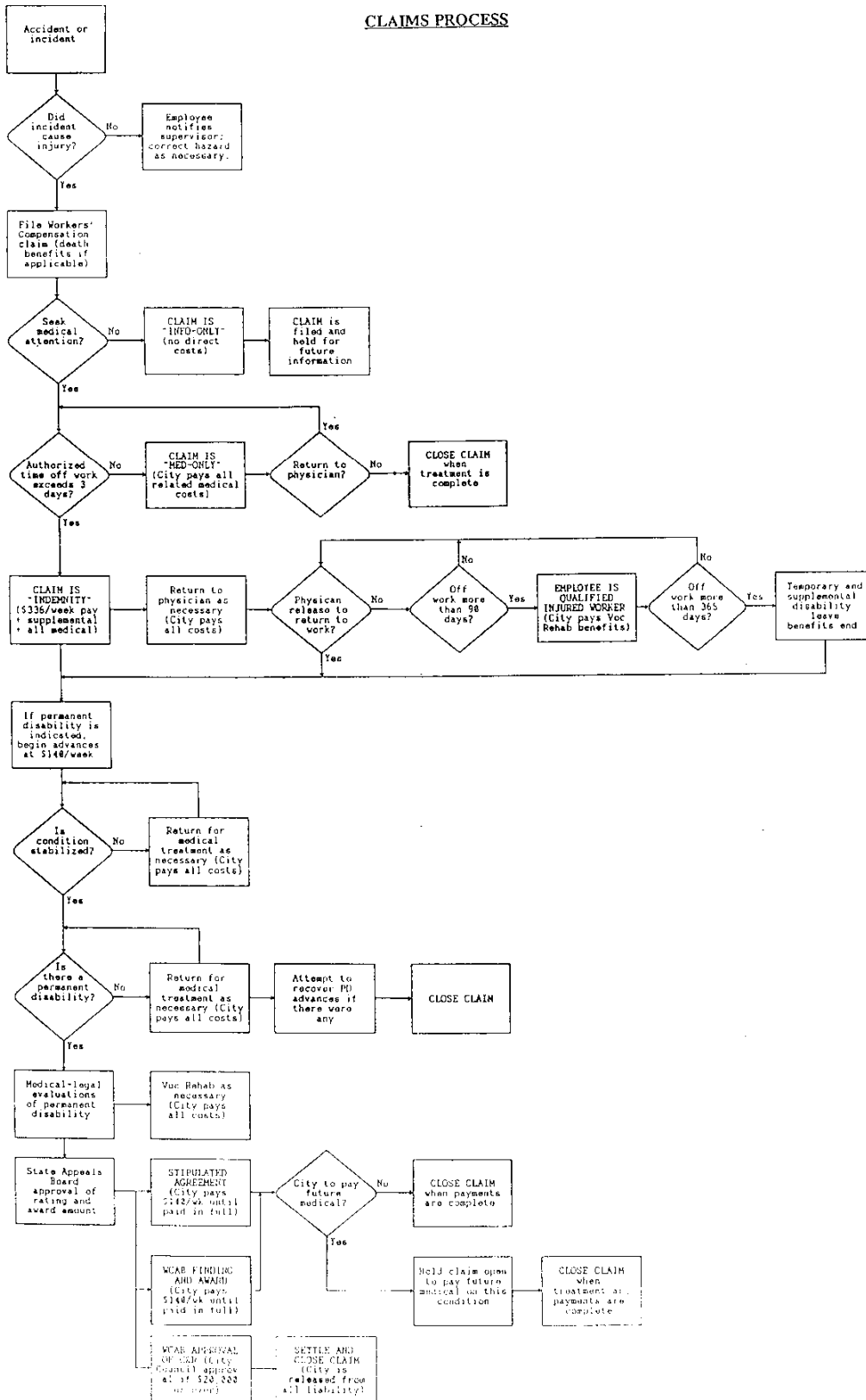
- **Death Benefit Claims.** Death benefits in workers' compensation claims include burial expenses and support for the dependent survivors of the deceased employee. In addition, any payments for either temporary or total disability due and unpaid at the time of death are paid to the dependents. Adjusters establish a reserve amount for future payments of the death benefit.

Medical-only and indemnity claims are the most frequently reported types of claims with each type comprising about 50 percent of the total number of claims in any one year. For example, in 1992-93, claimants filed 1,604 claims of which 791 were medical-only and 813 were indemnity.

The Chart II shows the claims process.

## CHART II

### CLAIMS PROCESS





## **Claims Management**

In 1991, Workers' Compensation acquired a claims data management system that aids the adjusters in managing their case loads and minimizing penalties. In July 1991, Workers' Compensation went on-line with a stand-alone computerized system that the David Corporation designed to run with Release 5.1 of CompPlus software. The David System tracks claims' status, produces management reports, and generates workers' compensation payments.

The state of California Office of Benefit Assistance and Enforcement (OBAE) conducts targeted and random audits of self-insurers. OBAE publishes a Schedule of Penalties listing the nature of the claims administration violations for which penalties from \$25 to \$5,000 may be assessed. For example, missing or incomplete file records and a claims administrator failing to provide a claim form within 24 hours upon an injured worker or his/her agent's request can result in fines of \$100 and \$5,000, respectively.

## **Revenue**

Funding for the City's Workers' Compensation Fund comes from four sources: (1) reimbursements from City funds, (2) investment interest earnings, (3) reimbursement from the State Compensation Insurance Fund, and (4) subrogation recovery. Revenues from the State Compensation Insurance Fund and subrogation recovery are extremely difficult to estimate as they are very unpredictable from year to year. Table I summarizes the Workers' Compensation Fund's activity from 1986-87 through 1993-94.

**TABLE I**  
**WORKERS' COMPENSATION FUND ACTIVITY 1986-87 THROUGH 1993-94**  
(In Millions)

	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Estimated
<b>Sources Of Funds</b>								
Reimbursement from City funds	\$11.5	\$ 9.5	\$ 7.8	\$ 7.9	\$ 7.7	\$ 9.6	\$ 9.8	\$ 9.6
Interest	2.2	2.5	3.0	2.6	2.2	1.8	1.7	1.4
Subrogation recovery	0.2	0.1	0.1	0.7	0.5	0.1	0.1	0.0
State Fund reimbursement	0.1	0.1	0.1	0.1	0.0	0.1	0.0	0.0
Transfers in	0.0	0.0	0.0	0.0	0.0	5.7	0.0	6.6
Total Sources Of Funds	\$14.0	\$12.2	\$11.0	\$11.3	\$10.4	\$17.3	\$11.6	\$17.6

**Reimbursement From City Funds**

The primary income stream for the Workers' Compensation Fund comes directly from each department's personal services budget and is based on payroll rates calculated for employees in five categories: police, fire, clerical, manual, and non-manual. At year-end 1993-94, reimbursement from City funds was estimated to be \$9.6 million.

**Interest Earnings**

Investment interest earnings are the main external source of revenue for the Workers' Compensation Fund. As of June 30, 1994, cash reserves (unaudited) for outstanding claims totaled approximately \$38.6 million. The City invests these funds in the City's pooled investments. For 1993-94, interest earnings were estimated at \$1.4 million.

### **Reimbursement From The State**

As a result of City participation in the State Compensation Insurance Fund prior to July 1974, the City continues to receive revenues in the form of reimbursements for pre-1974 claims that remain open. As of June 30, 1993, there were only four such open claims. In addition, if an employee with a pre-1974 claim was re-injured in later years and that injury is deemed to be related to the pre-1974 injury, that may also be a reimbursable claim. As deaths, retirements, and closed cases occur over the years, the payout from the State Compensation Insurance Fund has become less and less and is not predictable. On the other hand, since medical and rehabilitation costs have escalated, some post-1974 claims related to pre-1974 claims may result in higher levels of reimbursement than expected.

### **Subrogation**

When the negligence or intentionally wrongful act of some person other than the employer causes an industrial injury, the injured employee has two rights (causes of action): (1) the right to workers' compensation benefits and (2) the right to sue the wrongdoer for damages in a court action. However, these rights are governed so as to give the employee only the greater of the two recoveries. The damage suit is called a "third-party action." The City as employer also has a right to sue the wrongdoer for damages which consist of any compensation payments made to the employee. In this respect, the employer is said to be "subrogated" to the rights of the employee whom it insures. The number of third-party actions that will occur in a fiscal year is unpredictable as is the total of their potential settlement awards. Therefore, revenues from this source are also difficult to estimate.

## **Major Accomplishments Relating To The Program**

In Appendix B, the City Administration informs us of its accomplishments related to the program. According to the City Administration,

### **WORKERS' COMPENSATION**

- Two fraud convictions have discouraged the abuse of the workers' compensation system.
- Semi-annual workers' compensation reports have been augmented to include trend analysis for each department.
- \$1.1 million has been saved in eight months as the result of implementing a cost containment program that includes medical bill review, utilization review, preferred provider organization, and pharmacy bill review.
- A Disability Claims Task Force has been coordinated to redirect the manner in which workers' compensation is approached in the City.
- The division was reorganized and two claims adjusters were added for 1994-95.

### **SAFETY**

- Top management issued a formal policy on employee safety that conveys the department's commitment to safety and encourages employee involvement and the enforcement of safety measures.
- An Injury and Illness Prevention Program was developed to meet the requirements of SB 198.
- An Employee Education and Training Program was developed to train employees on safety issues. The following was undertaken as part of this program:
  - Safety Training Catalog
  - Ergonomics Training
  - Workers' Compensation Supervisor Training

- Defensive Driver's Training Course
- Supervisor Safety Training
- A recognition program was developed to encourage accident prevention. The program evaluated and reported on departmental safety programs and presented awards to departments with exceptional safety performance.

#### **WORKERS' COMPENSATION AND SAFETY**

- Total number of claims reported has decreased from 1991-92 to 1993-94.
- Total paid claims cost has decreased from 1991-92 to 1993-94.

## **FINDING I**

### **EXPANDED USE OF MODIFIED DUTY, IMPROVED INTRACITY COORDINATION AND COMMUNICATION, AND RESTRUCTURED BENEFITS COULD HAVE SIGNIFICANTLY REDUCED THE \$2.6 MILLION IN DISABILITY LEAVE BENEFITS THE CITY PAID IN 1993**

It is the city of San Jose's (City) policy to return employees with temporary disability occupational injuries and benefits to modified duty as soon as medically practical. In order to effectuate a modified duty policy such as San Jose's, an organization needs (1) appropriate tone at the top, (2) intraorganizational coordination and communication, (3) adequate and timely information, and (4) employees who are willing to cooperate. However, our review revealed the following regarding the City's modified duty policy:

- Coordination and communication between the Workers' Compensation Program, City departments, and the City's payroll function are not adequate regarding disability leave approvals and monitoring;
- Modified duty opportunities have been limited;
- The cost of disability leave on a departmental basis has been essentially hidden; and
- Disability leave benefits provide a disincentive for employees to return to work on a modified duty basis.

As a result, the City's disability leave usage is nearly three times the average for other California jurisdictions, disability leave cost the City \$2.6 million and the equivalent of 65 full-time employees in 1993, and there is a widespread perception that employees are abusing their disability benefits and physicians are underprescribing modified duty work. San Jose could significantly reduce its cost of disability leave in terms of dollars and lost staff time by

- Increasing the availability of modified duty work;
- Coordinating work restrictions with physicians;
- Improving intracity coordination and communication regarding modified duty;
- Developing better information regarding the cost of disability leave; and
- Restructuring employee disability leave benefits.

**City Policy Is To Return Injured Employees  
To Modified Duty As Soon As Medically Practical**

City employees are entitled to compensated leave if they are temporarily totally unable to work due to a work-related illness or injury. However, if the employee is unable to perform his or her regular work, but is capable of doing some other form of light work or the employee's treating physician certifies that the employee has recovered sufficiently to try light work, then,

*It is the policy of the City of San Jose to return employees with temporarily disabling occupational injuries and illnesses to modified duty as soon as medically practical. Department managers will make every reasonable effort to provide meaningful work assignments to all employees capable of performing modified duty.*

*The intent of this policy is to reduce disability leave usage and benefit employees physically and psychologically by providing them an opportunity to return to work at the earliest possible date commensurate with their disability. This will help prevent the loss of self confidence and self respect that is often associated with prolonged absences from work. Early return to work on the part of the employee also benefits the department because they will receive some productive service from an employee who would otherwise be receiving his or her regular salary from the department's budgeted personal costs while not at work.*

Numerous articles in industry journals agree that returning employees to work as soon as medically practicable reduces the cost of workers' compensation claims.

Furthermore, the effect can be dramatic. For example, Oregon State agencies reduced their workers' compensation costs by 75 percent over two years largely due to quickly returning injured employees to their jobs or to modified duties.

Moreover, according to one rehabilitation consultant, *"modified work can be the least costly and the most effective therapy."* For example, the county of Peoria, Illinois, cites several benefits of its light duty program including:

- Reduced workers' compensation costs;
- Faster recoveries of employees in appropriate light duty jobs;
- Physicians accelerating employees' return to work when they are aware that the county offers light duty work; and
- A net gain for the county of the productive work of employees who otherwise would have been off duty.

#### **Elements Of An Effective Modified Duty Program**

Effective modified duty programs have several elements in common. The first element, tone at the top, has been shown to heavily influence workers' compensation costs. For example, in the city of Long Beach, a new police chief made it clear to employees that abuse of disability leave would not be tolerated, that light duty was available, and that employees were expected to be at work unless they were bedridden. This clear, strongly stated message, combined with general improvements in department morale, is credited with dramatically decreasing workers' compensation costs in that city.

Second, several experts agree that effective intraorganizational coordination and communication is another key to the success of a modified duty program. However, placing employees in modified jobs requires coordination



between divisions and departments. For example, if the employee's regular job within a division cannot be modified, the search for a modified job should be broadened to the whole department or other departments if necessary. Employees at all levels of the organization (employees, supervisors, middle managers, and top executives alike) must understand the value and importance of devoting time and attention to a modified work program. After all, *"It could easily be you. Any one of us could have an accident or an illness and need a program like this."*<sup>1</sup>

Third, an effective modified duty program depends on adequate and timely information about disability leave usage and modified duty opportunities.

*According to managed disability experts, controlling disability costs is virtually impossible without effective data systems. The reason, they say, is simple: You can't manage a situation you don't understand. And without good information, it's impossible to understand what needs to be done.*<sup>2</sup>

Fourth, a successful modified duty program hinges on the cooperation of employees. Specifically, employees and their supervisors must focus on what the employee **can do** during the recovery period, not just what he or she can't do. While in the past employees may have been able to take time off with no questions asked, they must be convinced to see the value of returning to work part-time or on modified duty. Job satisfaction can also play a major role. As a result, some employees are anxious to return to work while others are not. For example, the city of Madison, Wisconsin, found that absenteeism and workers' compensation claims fell sharply when employees joined teams and their job satisfaction increased.

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<sup>1</sup> Business & Health magazine.

<sup>2</sup> Business & Health magazine.

### *Early Contact With Injured Employees*

Industry experts also agree that early contact with injured employees reduces claims costs. In addition to being good customer service, prompt contact of injured employees reduces the potential for cases to be litigated. According to an industry journal article on workers' compensation cost strategies,

*Fostering an atmosphere of concern strengthens employee relations. And because employees become less inclined to seek legal advice from attorneys, it also results in considerable workers' compensation savings.*

The actuary who prepared the last actuarial study for the City's Workers' Compensation Program also agreed that early contact with claimants is important as it can reduce the number of cases going into litigation. Furthermore, according to a rehabilitation consultant,

*Case management that is thorough, yet non-threatening, has been found to be a key component to disability management. Recent research . . . suggests that case management needs to be handled skillfully or it can easily backfire and actually lengthen the period of disability rather than shorten it.*

During our audit, we noted that the Department of Corrections at Soledad has hired a consultant to make first contact with a claimant within three days after he or she files a workers' compensation claim to (1) explain workers' compensation benefits, (2) answer questions, and (3) assess the claimant's potential for returning to work. Within five days, the consultant meets face-to-face with the claimant and the department's return-to-work coordinator. For the closed cases which had been subjected to this process, the consultant reports an 81 percent reduction in paid costs, 76 percent faster return to work, and an increase from 91 percent to 100 percent in the return-to-work rate. In addition, the consultant reported a reduction in the number of employees applying for medical retirement and in the overall average number of days off work.

The Risk Manager has indicated a preference for a 24-hour initial contact with employees. However, reducing adjuster case loads is a necessary precursor of this type of proactive case management. The issue of adjuster case loads is addressed in Finding II of this report.

**Coordination, Communication, And Monitoring  
Of Disability Leave Approvals Are Not Adequate**

Our review of the City's modified duty program revealed several areas that need improvement. First, we found information and communication gaps between City departments, Workers' Compensation, and Payroll that render controls over the use of disability leave inadequate. City procedures specify that

*Each supervisor has the responsibility to check each time report to ensure that it has been legibly and correctly completed . . . any disability leave entered must be authorized by the Workers' Compensation Section.*

In practice, this means that whoever is signing the time sheet should be getting verbal approval from Workers' Compensation before approving disability leave, because only the Workers' Compensation section can authorize use of disability leave.

However, supervisors do not obtain Workers' Compensation verbal approvals for each use of disability leave before submitting time sheets. Instead, supervisors appear to rely heavily on Workers' Compensation to pick up discrepancies between authorized disability leave and payroll records. In addition, there appears to be a common misconception among employees that physicians and/or supervisors can authorize disability leave when, in fact, only Workers' Compensation can authorize disability leave. Appendix C shows the disability leave approval process.

City procedures specify that Workers' Compensation is responsible for checking the biweekly disability leave printout and verifying that the use of

disability leave is consistent with authorizations in the claim file. Theoretically, this review would catch those errors the supervisor and timekeeper missed. However, our review revealed that, in practice, Workers' Compensation cannot verify each use of disability leave on the printout against days scheduled to be worked and physician approvals for two reasons. First, the disability leave printout shows total hours of disability leave taken during the pay period but does not specify which days were coded as disability leave. Second, Workers' Compensation is not notified of which days the employee was scheduled to work. Thus, the biweekly payroll disability leave reports alone cannot be used to verify that the employee took disability leave as authorized.

This situation is complicated by the fact that recovery periods are frequently uneven. In other words, an employee may be off work, back to work, and then off again as a result of the same injury. In addition, employees frequently have more than one claim open at the same time. Generally, employees are eligible for up to 365 days of physician- or chiropractor-prescribed temporary disability leave per injury. The employee does not have to take the 365 days consecutively. Case #19 is an example of how an uneven recovery process affects the use of disability leave.

WORKERS' COMPENSATION CASE #19

A police officer was hit by a passing car during a traffic stop. Initially, the officer was unable to work for 9 weeks. He returned to work for 2 weeks and then went out again for 3-1/2 weeks. He returned to work for almost 6 months then went out for 3 days. He returned to work for 2 months then went out for 11 days. He returned to work for a week and then went out for 12 days. The physician who approved each disability leave period attributed the time off to this particular injury.

Total temporary disability as a result of this injury: 114 days

Obviously, monitoring disability leave usage requires close coordination between supervisors and Workers' Compensation adjusters for two reasons. First, only supervisors have complete access to information about days scheduled to be worked. Second, only Workers' Compensation adjusters have complete access to approved disability leave dates.

Although phone confirmations of disability leave are cumbersome, they are necessary to ensure that Workers' Compensation approves each use of disability leave. As electronic mail becomes more available across the City, Workers' Compensation may want to consider using electronic mail to expedite disability leave approvals, especially with those departments with large numbers of employees taking disability leave during a pay period. In addition, Workers' Compensation needs to periodically clarify, reinforce, and remind supervisors and timekeepers (whether through training sessions or memoranda) of their responsibility in the disability leave approval process.

After disability leave is taken, Workers' Compensation adjusters prepare a Supplemental Disability Leave Approval form to notify Payroll of the amount of non-taxable disability leave benefits received and to correct employee sick leave and/or disability leave totals (see Appendix D). As with other disability leave approvals, there is a common misperception that Payroll regularly verifies payroll records against these forms. This is not, in fact, the case. Payroll simply forwards the approval forms to the Information Systems Department for data entry of the non-taxable benefits. In addition, Workers' Compensation does not routinely forward copies of Supplemental Disability Leave Approval forms to departments. In our opinion, claimants, departmental workers' compensation liaisons, and timekeepers should receive copies of these approval forms so that they can verify usage and make corrections if necessary.

Finally, Workers' Compensation, Payroll, and departmental workers' compensation liaisons should also better coordinate approval and monitoring of disability leave without creating duplicative tracking systems. For example, in an effort to get control of the disability leave problem, the Police and Fire Departments' workers' compensation liaisons are setting up databases to help them track use of disability leave. However, the information that these liaisons need is in the workers' compensation claims database and payroll systems and not readily available. In addition, while City departments are responsible for preparing accident logs per Occupational Safety and Health Administration (OSHA) requirements, the workers' compensation claims database could automatically produce this log for the departments if Workers' Compensation staff entered lost time into the workers' compensation claims database on a consistent basis. Recognizing this fact, the Workers' Compensation section is working on a project to produce the OSHA logs and distribute them as needed. This project will also facilitate ongoing safety analysis and tracking of the severity of injuries Citywide.

#### **Modified Duty Opportunities Are Limited**

Our review also revealed that modified duty opportunities in the City are limited and that some opportunities to place employees in modified duty positions have been missed. We found that the Police, Fire, Streets and Parks, and Airport Departments have workers' compensation liaisons who are responsible for coordinating workers' compensation claims paperwork, modified duty placements in their departments, and attending periodic Disability Claims Task Force meetings. While employees from these four departments received approximately 85 percent of the City's 1993 disability leave payments, none of the City's other

departments have specified workers' compensation liaisons and only occasionally offer modified duty.

In addition, supervisors appear to be somewhat resistant to modified duty. We reviewed a file where the supervisor flatly told the employee and the adjuster that there was no modified duty available. In another case, a departmental representative expressed concern that modified duty just drags out the process of moving an employee to an appropriate permanent job and leaves the department short-staffed in the meantime. Other supervisors expressed concern that temporary modified jobs will turn into permanent modified jobs. These attitudes notwithstanding, we found that the departmental workers' compensation liaisons are some of the biggest boosters of modified duty. The departmental liaisons repeatedly told us that modified duty is a win-win situation and "the miracle cure" for employees who can't wait to get out of the office and back to their regular duties.

Employees are also somewhat resistant to modified duty. During our review, we repeatedly heard that sworn personnel are (1) resistant to working eight-to-five desk jobs, (2) not challenged by modified duty work assignments, and (3) unhappy with modified duty work areas. In addition, sworn personnel on disability leave during the shift bidding process may lose contact with a direct supervisor to encourage modified duty. Nonetheless, our review revealed that the Police and Fire Departments are probably the largest users of modified duty. For example, the Police Department usually has 20 to 30 officers in permanent or long-term modified duty positions and 5 to 10 officers in temporary or short-term modified duty positions.

### **The Cost Of Disability Leave On A Departmental Basis Is Essentially Hidden**

Our review also revealed that departmental and Citywide disability leave costs are not obvious in normally distributed budget documents. The City spent approximately \$11.8 million on workers' compensation claims benefits and administration in 1992-93. In addition, \$3 million in disability leave was paid out of other City funds--\$1 million in temporary disability leave pay and \$2 million in disability leave supplement (DLS) pay. As a result, the total cash cost of the Workers' Compensation Program for 1992-93 was actually \$14.8 million--25 percent more than reported in regular budget documents. Moreover, in addition to cash payments, City departments lost at least \$3 million in productive staff time in 1992-93 because of workers' compensation absences. Further, to the extent that departments used compensatory time, overtime, or temporary workers to cover for disability leaves, the ultimate cost to the City was even higher. While some of the above costs are shown in some budget documents, the total cost of the Workers' Compensation Program is not shown even collectively in any City budget or other financial documents. Without such cost information, it is more difficult for the City Council and the Administration to comprehend the magnitude of the Workers' Compensation Program and to design a cost containment strategy.

### **Supplemental Disability Leave Benefits Provide A Disincentive To Return To Work On A Modified Duty Basis**

Another contributing factor to high use of disability leave is that the City's DLS benefit gives employees an economic incentive to stay away from work as long as possible. In San Jose, sworn employees on workers' compensation receive 100 percent of their pay while out on disability. All other City employees on workers' compensation receive 85 percent of their pay and are able to make up the difference with sick leave if they so choose. This arrangement actually results in



employees increasing their take-home pay while on disability leave. This is because Title 26 of the Internal Revenue Code exempts **state-mandated** workers' compensation benefits including damages (other than punitive damages) from taxable gross income. Thus, an employee who drew the maximum state-mandated temporary disability (TD) benefit of \$406 per week<sup>3</sup> for an entire year would receive \$21,112 in tax-free earnings and a resulting tax savings of \$5,901 (assuming a 27.95 percent tax rate). Table II compares pre-injury net income to post-injury net income under three scenarios.

**TABLE II**  
**COMPARISON OF PRE-INJURY AND POST-INJURY NET INCOME BASED**  
**ON LEVEL OF DISABILITY LEAVE SUPPLEMENT BENEFITS**

	<b>Pre-Injury Net Income</b>	<b>Sworn Employee With 100% Benefit</b>	<b>Non-Sworn Employee With 85% Benefit (using sick leave)</b>	<b>Non-Sworn Employee With 85% Benefit (not using sick leave)</b>
Regular salary	\$40,000	\$ 0	\$ 0	\$ 0
TD pay (non-taxable)	0	21,112	21,112	21,112
DLS pay	0	18,888	12,888	12,888
Sick leave pay	0	0	6,000	0
Estimated Tax (27.95%)	<u>(11,180)</u>	<u>(5,279)</u>	<u>(5,279)</u>	<u>(3,602)</u>
<b>NET INCOME</b>	\$28,820	\$34,721	\$34,721	\$30,398
Increase in net income		\$5,901	\$ 5,901	\$1,578
		20%	20%	5%

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<sup>3</sup> The maximum state-mandated TD benefit increased from \$336 per week to \$406 per week as of July 1, 1994.

As shown in Table II, a sworn employee who earns \$40,000 in salary could actually increase his or her take-home pay by 20 percent while on disability leave for a whole year. For a non-sworn employee, his or her take-home pay could increase 5 percent to 20 percent depending on whether he or she used sick leave to supplement workers' compensation benefit payments.

#### **Wage-Loss Calculations**

It should also be noted that workers' compensation law stipulates that TD payments should be reduced by the employee's earnings at another job. Specifically,

*If the employee is able to obtain some type of work despite his or her partial incapacity, he or she is entitled to compensation on a wage-loss basis. Currently, wage-loss compensation is 2/3 of the difference between earnings on the new job and the actual earnings at time of injury (subject to the maximum and minimum limits for earnings).*

As a result, the Workers' Compensation Manager has prepared an Outside Earnings Statement to accompany the initial benefits package to claimants. The statement asks the claimant to disclose whether he or she had any outside earnings while receiving DLS/TD payments. Upon receiving notification of outside earnings, adjusters will compute the offsetting reduction in TD benefits. This will reduce the non-taxable portion of the claimant's disability earnings. However, because the City's memoranda of agreement specify that the DLS benefit will compensate the employee at either 85 percent or 100 percent of his or her earnings at the time of the injury, the DLS portion will simply increase. The employee's gross earnings from the City will not change.

#### **Other Jurisdictions Have Reduced Disability Leave Benefits**

It is commonly understood that DLS benefits are a disincentive to early return to work. In the mid-1980s, the state of Washington implemented several

management improvements to control rising workers' compensation costs including persuading the unions to agree to a cut in the regular benefit rate. While most state programs have been operating at a loss year after year, the Washington program now has a healthy \$340 million surplus. Additionally, annual cost increases have been in single digits and not much higher than the inflation rate.

*In most states, workers' comp is a ceaseless battle between labor unions and employers. The unions want the highest possible benefit levels; the employers mainly want to keep the premiums down. In that climate, it is impossible for either side to ride herd on the interests that benefit from a high-cost program -- health providers, trial lawyers and others who collect a sizable chunk of what the state pays out.*

*In Washington, business and labor -- the two interests that don't benefit from a wasteful system -- managed to get together . . . workers pay 20 percent of the premiums; they understand their stake in cost control . . .*

*[An aggressive management team] got the unions to agree reluctantly to a cut in the regular benefit rate . . .*

*When business and labor stop fighting, a lot can be accomplished.<sup>4</sup>*

Similarly, in 1985, the City negotiated changes in one memorandum of agreement which reduced disability leave benefits. Prior to 1985, the disability leave benefit for Confidential Chapter of the Municipal Employees Federation (MEF) members was 100 percent of salary. Since 1985, the disability leave benefit for MEF and Confidential Employee's Organization members has been 85 percent of salary.

In addition, some California jurisdictions have lower benefit rates than San Jose's. In San Diego, net pay stays the same. The memoranda of agreement have been negotiated such that employees receive no more than the same net pay while on disability leave than they receive when they are working. In the city of San Bernardino, only public safety personnel receive salary continuation at 100 percent

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<sup>4</sup> Governing, October 1992.

of salary for a year. Employees at San Bernardino's Water Pollution Control Plant receive salary continuation at 85 percent of salary for 30 days. All other non-sworn, permanent employees receive the salary continuation benefit at 85 percent for one week only.

Furthermore, the problem is the same across the country. An audit of Jacksonville, Florida, workers' compensation payments pointed out that *"A salary supplement to Workers' Compensation which gives employees 80 percent to 100 percent of their average weekly pay induces the claimants to try to prolong their benefit far beyond the time that they are medically fit to return to work."* The auditors recommended that employees on disability leave not accrue personal leave or holidays.

Thus, in our opinion, San Jose should take notice of how other jurisdictions are dealing with the issue of disability leave and how to maintain benefits for deserving claimants while reducing incentives for malingerers to take advantage of the system. In fact, the Human Resources Department just formed an interdepartmental Organization Development (OD) Team on July 22, 1994, to address *"the current process of returning a City employee back to work after a job related injury [which] is time consuming and costly."* In our opinion, the issue of restructuring employee disability leave benefits would be an appropriate topic for the nascent OD Team given that their number one goal is *"to reduce lost staff time resulting from an employee being injured on the job."*

It should be noted that several other California cities are able to offer their sworn employees entirely tax-free DLS benefits because they have Public Employee Retirement System (PERS) reciprocity agreements. If the City were to establish such an agreement, we estimate that sworn City employees would received a tax benefit of approximately \$390,000 (28 percent tax rate times

approximately \$1.4 million in taxable annual DLS payments to sworn employees). However, it should also be noted that this would decrease the employees' economic incentive to return to work.

**San Jose's Disability Leave Usage Was Nearly Three Times The State Average, Cost The City \$2.6 Million, And Reduced The City's Work Force By 65 FTEs In 1993**

As a result of all the above factors, San Jose's disability leave usage is high. In fact, according to the most recent available OSHA data (1990), San Jose's disability leave was more than three times the state average of 110 days away from work per 100 employees. Specifically, in 1992, San Jose employees took as much as 393 days away from work per 100 employees, and in 1993 they took as much as 270 days per 100 employees. Disability leave cost the City \$3.5 million and the loss of 84 full-time equivalent (FTE) employees in 1992 and \$2.6 million and the loss of 65 FTEs in 1993. State-mandated TD accounted for \$820,000 (31 percent) of the \$2.6 million in total disability leave payments.

Our analysis of payroll reports revealed that 720 out of the City's 6,300 covered employees (1 out of 11 employees) took disability leave during 1993. Total disability leave usage was 136,000 hours, or an average of 190 hours for each of those employees. Disability earnings cost the City an average of \$100,000 per pay period. Table III shows the cost of disability leave and the effect on staffing by pay period.

**TABLE III**

**1993 DISABILITY LEAVE BY PAY PERIOD**

<b>Pay Period</b>	<b>Number Of Employees Taking Disability Leave</b>	<b>Number Of Hours</b>	<b>Disability Earnings</b>	<b>Equivalent Number Of FTEs</b>
1	111	6,024	\$126,348	75.3
2	125	5,670	116,694	70.9
3	130	5,843	116,311	73.0
4	113	4,944	98,283	61.8
5	118	5,224	102,318	65.3
6	113	4,029	78,184	50.4
7	112	4,193	75,888	52.4
8	115	4,259	79,201	53.2
9	117	4,646	88,129	58.1
10	116	4,991	93,948	62.4
11	127	4,997	94,827	62.5
12	111	4,382	80,822	54.8
13	122	4,571	85,731	57.1
14	123	5,085	95,201	63.6
15	111	5,261	98,638	65.8
16	121	5,070	95,455	63.4
17	133	5,503	103,599	68.8
18	134	5,584	106,773	69.8
19	125	5,758	112,588	72.0
20	113	5,381	103,202	67.3
21	110	4,991	95,496	62.4
22	127	5,013	103,184	62.7
23	120	5,515	108,998	68.9
24	120	5,639	114,124	70.5
25	124	5,926	119,607	74.1
26*	102	7,336	139,737	91.7
<b>TOTAL FOR 1993*</b>	<b>720</b>	<b>135,835</b>	<b>\$2,633,286</b>	<b>65.3</b>
<i>AVERAGE PER PAY PERIOD</i>	<i>119</i>	<i>5,224</i>	<i>\$ 100,280</i>	<i>65.3</i>

\* Including adjustments

The heaviest users of disability leave are the Police (47 percent of total cost), Fire (23 percent of total cost), and Streets and Parks (14 percent of total costs) Departments. The Police Department alone lost the equivalent of more than 24 FTEs for the entire year to disability leave. Table IV shows 1993 disability leave by department.

**TABLE IV**  
**1993 DISABILITY LEAVE BY DEPARTMENT**

<b>Department</b>	<b>Disability Leave Hours</b>	<b>Number Of Employees Taking Disability Leave</b>	<b>Total Disability Leave Earnings</b>	<b>Equivalent Lost FTEs</b>
<b>Police</b>	<b>50,253</b>	<b>301</b>	<b>\$1,239,912</b>	<b>24.2</b>
<b>Fire</b>	<b>33,029</b>	<b>187</b>	<b>606,753</b>	<b>15.9</b>
<b>Streets and Parks</b>	<b>26,720</b>	<b>88</b>	<b>380,352</b>	<b>12.8</b>
Environ Services	8,137	37	142,661	3.9
General Services	5,570	24	83,983	2.7
Conv Cult Visitor Serv	3,404	15	47,550	1.6
Library	2,031	8	24,250	1.0
Planning	1,867	8	40,058	0.9
Airport	1,639	23	21,785	0.8
Information Systems	934	4	12,310	0.5
Finance	922	3	14,390	0.4
RPCS	720	7	9,521	0.3
Attorney	412	1	6,227	0.2
Public Works	154	6	2,799	0.1
Housing	24	4	442	0.0
Council	8	1	135	0.0
Human Resources	6	1	84	0.0
WPCP	3	1	49	0.0
Clerk	2	1	25	0.0
Manager	0	0	0	0.0
Auditor	0	0	0	0.0
Neighborhood Pres	0	0	0	0.0
<b>TOTAL</b>	<b>135,835</b>	<b>720</b>	<b>\$2,633,286</b>	<b>65.3</b>

Disability leave earnings are paid out of departmental personal services budgets--not out of the Workers' Compensation Fund. Especially in departments with minimum staffing levels, high levels of disability leave usage will almost certainly generate replacement staffing needs such as overtime, temporary staff, and compensatory time costs. However, departments with sworn staff will most likely have no salary savings to pay for replacement staffing. Other departments will have only a 15 percent salary savings to pay for replacement staffing because of the DLS benefit (100 percent minus 85 percent DLS) or no salary savings if employees use sick leave to supplement their DLS benefit.

In 1993, after years of increasing costs, total disability leave costs declined. Specifically, total disability leave costs increased by 21 percent between 1991 and 1992 (from \$2.9 million to \$3.5 million) and then decreased by 26 percent between 1992 and 1993 (to \$2.6 million). In addition, disability leave usage went down from 176,000 hours in 1992 to 136,000 hours in 1993. The largest users of disability leave--the Police and Fire Departments--cut their disability leave usage as follows:

<u>Department</u>	<u>Disability Leave Hours</u>	<u>Loss In Productivity</u>
Police	74,439 hours in 1992	35.8 FTEs in 1992
	<u>50,253 hours in 1993</u>	24.2 FTEs in 1993
	32% decline	
Fire	39,887 hours in 1992	19.2 FTEs in 1992
	<u>33,029 hours in 1993</u>	15.9 FTEs in 1993
	17% decline	

The City's Risk Manager speculates that the decline in the use of disability leave is a result of:



- The revitalization of the Disability Claims Task Force, the Safety Program, and greater awareness at a departmental level about disability claims;
- The deterrent effect of recent publicity about a fraud case in the Fire Department; and
- Adjusters paying increased attention to the problem of excessive disability leave usage.

**Perception That Some Employees Are Abusing  
Their Disability Leave Benefits And That  
Physicians Are Underprescribing Modified Work**

In spite of the recent decline in disability leave usage, our review revealed that the City needs to be more aggressive in pursuing employees' early return to work. We found widespread frustration among Workers' Compensation adjusters, departmental liaisons, City employees, and supervisors that some claimants treat disability leave as an entitlement rather than as a protection. As the following quote from Business & Health demonstrates, morale can become a significant disability issue:

*. . . among a disabled employee's coworkers -- the ones who often have to pick up the employee's extra work . . . . The morale problem can be compounded if employees suspect that their coworker is a malingerer. If an individual is continually abusing the disability program, that can really affect the morale of the remaining coworkers.*

In addition, it appears that employees' physicians are underprescribing modified duty when it could be used to return employees to work earlier. During our audit, we examined 79 cases filed during a three-year period. Of these 79 cases, 39 percent involved employees being unable to work for at least one day,

while the longest time on disability was 306 days and the average time on disability was 38 days. However, physicians recommended modified duty in only 45 percent of these cases, and only one file documented the use of modified duty.

The reluctance of physicians to return employees to work is understandable. Given the choice, physicians tend to practice conservative medicine. Traditionally, "unable to work" has simply meant that a physician decided that a person was temporarily disabled with no questions asked and no consideration given to the fact that the physician was probably unaware of the employee's specific job duties.

While medical considerations clearly hold dominion over return-to-work decisions, attitudes about modified duty also have a major influence. As might be expected, our sample of claims revealed instances of physicians approving extended periods off work without vigorously pursuing modified or part-time duty. For example, in two cases of uncomplicated hernia surgery, one employee was given three weeks off work, while another employee was given seven weeks off work. We also found numerous examples of physicians indicating that the employee was totally unable to work up until the time the employee returned to work at full capacity. For example, in Case #36, the employee, who had school-aged children, was off work on disability all summer. The physician indicated after each of several examinations that the claimant was totally unable to work. The physician then abruptly diagnosed the employee as being able to return to full-time work without restrictions in the fall after school started.

### WORKERS' COMPENSATION CASE #36

June 1990 -- Employee sustained a back injury when he was rear-ended at a red light; employee was wearing a seatbelt. He was on disability leave from June 19 to September 19; the employee's physician reported that the patient remained totally disabled and unable to work during that time. On September 19, the physician released the employee to full duty the next day. A physical evaluation of the employee in November 1990 found minimal back tenderness. In August 1991, another physician reported that the patient was not precluded from doing any work and was self-treating with Tylenol. However, in September 1991, the Workers' Compensation Appeals Board gave the employee a 4-3/4 percent permanent disability rating, including a cash award of \$1,995 and future medical care.

Total claims costs to date (including disability leave pay): \$18,909

In those departments that do offer modified duty, an impediment occurs when physicians do not release employees to modified duty in a timely manner. For example, the Fire Department has a disability program coordinator who (1) manages the cases of all employees injured on the job and (2) monitors and analyzes all disability and extended sick leave usage. The Fire Department stresses the use of modified duty and has a variety of modified duty positions available including clerical and desk jobs, inspection work, and training positions. However, the disability program coordinator reports that most employees are released back to work without restrictions instead of interim modified assignments.

There is considerable frustration among departmental workers' compensation liaisons because physicians decline to specify work restrictions. The suspicion is that physicians are "rolling over" when an employee wants to take time off. For example, while the Airport's workers' compensation liaison has successfully found modified work for recuperating employees, the liaison has

found that most employees do not come back to work until they can work with no restrictions and with no prescription for modified duty in the mean time.

**Use Of Disability Leave In The Year Prior To Retirement**

Questions of ethics and fairness also arise when an employee collects DLS for the year prior to retirement. Our review revealed that 39 City employees took disability leave in 1993 and went on to retire by year-end. Of those 39 employees, 9 took more than 1,000 hours of disability leave during 1993-- 4 of them were sworn employees and retired before the end of the year after receiving from \$24,000 to \$42,000 each in disability pay at the 100 percent level.

Obviously, an employee on disability leave may fully expect to return to work but may need to retire because of a change in his or her physical condition. However, our review revealed that some employees may be "milking" the disability leave system prior to retirement. For example, one employee who is currently on disability leave has clearly stated to his departmental liaison that he does not intend to come back to work prior to retirement. In fact, he filed his retirement papers and then pulled them, telling the liaison that he wanted to take advantage of his full year of disability leave at 100 percent of pay before retirement. Thus, for one year the employee can theoretically collect 100 percent of pay, \$406 per week in non-taxable benefits, not work, and still accrue sick leave, vacation time, and a year of service for retirement purposes.

Although it may be in the individual employee's financial interest to stay out on disability leave for the entire year, this certainly takes a toll on the employee's co-workers if the position remains unstaffed for the entire year. Apparently, the City's only recourse is to (1) insist that the treating physician explain the

employee's medical restrictions and (2) insist that the employee perform modified duty to the extent of his or her capabilities. In our opinion, the City should also enhance coordination between the Retirement and Workers' Compensation offices to (1) ensure that employees understand that Workers' Compensation can fully cover their medical costs for a work-related injury even after retirement and (2) expedite the retirement of such employees so that departments can fill those positions with productive employees.

### **The City Should Increase The Availability Of Modified Duty**

An employee who is off work on disability leave receives 85 percent to 100 percent of his or her salary, but the employee's department gets nothing in return. With modified duty, the employee still receives 85 percent to 100 percent of his or her regular salary but the department receives some productive service from the employee, albeit not his or her regular service. The consensus in the literature we reviewed is that employers should

*. . . develop light-duty [modified duty] programs to eliminate the injured workers' opportunity to remain at home when it is possible to come back to work, even on a limited basis. Because many employers, specifically public entities and union shops, agree to pay 100 percent of wages when an employee is out on disability, there is no economic incentive to keep productive employees . . . [on] the job. Even if the injured worker returns to simply answer the phones, no money will be lost.<sup>5</sup>*

Modified duty job assignments must be tailored to the employee's work restrictions. Clearly, this may require some creativity. For example, the Streets and Parks Department workers' compensation liaison's current list of possible modified duty positions includes: assisting in traffic studies, sorting traffic data or

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<sup>5</sup> National Underwriter, August 1993

parking tickets, answering phones in the office or at the yard, working in dispatch at the yard, and sewer pump station monitoring.

It may be difficult for small departments to find openings for employees needing modified duty. In our opinion, these smaller departments should combine their modified duty efforts with other City departments. Some jurisdictions have successfully established modified duty pools that allow employees to work modified jobs across divisional or departmental lines. For example, the city of San Diego's modified duty pool has successfully placed personnel in other departments when light duty was not available in their own departments. In the city of Long Beach, at one point most of the police detectives who were on modified duty were working on a special project in the public works department. The Bay Area Rapid Transit District (BART) also has a centrally administered modified duty program. This program provides modified work for employees recovering from both industrial and non-industrial injuries. BART usually limits temporary assignments to 90 days. To clarify work restrictions, BART has developed a work restrictions questionnaire for treating physicians (Appendix E) and a skills questionnaire for employees seeking assignments (Appendix F).

The City's Disability Claims Task Force has discussed the idea of a modified duty pool. The Risk Manager tentatively expected that workers' compensation liaisons would continue to handle most modified duty assignments while Workers' Compensation personnel would coordinate intradepartmental assignments. It should be noted that the Fire Department memorandum of agreement states that employees must be returned to modified duty in the Fire Department. The Police Department memorandum of agreement guarantees that modified duty will be provided but does not specify its location.

**Workers' Compensation Should Improve Coordination  
And Communication With Employee Physicians And The City Physician  
Regarding Disability Leave And Modified Duty**

Workers' Compensation adjusters rely on physicians to assess an employee's disability status and estimate return-to-work dates. The California Code of Regulations requires employee-selected physicians to submit a written report to the employer within five working days of the initial examination that includes, if appropriate, the estimated return-to-work date for regular or modified work. The physician is also required to *"report promptly to the employer when . . . the employee's condition permits return to modified or regular work."* Once a disability exceeds 90 days, City procedures require adjusters to send the physician a description of the specific physical activities performed in the course of the employee's regular work.

Workers' Compensation sends form letters to the treating physicians informing them of the City's policy to provide modified duty for injured employees. In addition, according to the Personnel Administrative Manual, employees are responsible for informing their physicians that modified duty may be available if they are unable to perform their regular work.

However, the City's primary method of communicating with physicians, the modified duty form letter, is just that--a form letter. As such, the letter does not provide physicians with information about the physical requirements of the job. Instead, the letter assumes that the physician knows what a police officer or an analyst or an equipment operator is required to do. Furthermore, when someone is off work for only a few days or a week, Workers' Compensation does not send the letter out in time. Further, time constraints dictate that Workers' Compensation should contact the physician by phone or fax to determine restrictions. As it is,

Workers' Compensation adjusters focus only on the long-term cases and not those cases that last for only a few days or weeks.

In our opinion, the City should improve coordination with physicians by aggressively informing them of the City's modified duty policy. For example, the city of Avalon is reducing claims by (1) educating employees and local physicians about the city's early-return-to-work policy and (2) getting the city and the treating physicians to work cooperatively to return injured employees to work. This lowers workers' compensation and replacement personnel overtime costs.

### **Occupational Health Services Is Underutilized**

The Personnel Administrative Manual also directs employees to report to Employee Medical Services (now known as Occupational Health Services) with written work restrictions for a second assessment of whether the employee is medically capable of returning to modified duty. However, Occupational Health Services is not involved in this process. In fact, the City Physician in Occupational Health Services is hardly involved in the Workers' Compensation process.

There is some consensus that Workers' Compensation could benefit from additional professional medical advice. The City Manager's 1994-95 Proposed Operating Budget included, but did not recommend, a proposal to expand the City Physician from half-time to full-time. This would have allowed the physician to expand his work into the workers' compensation- and safety-related areas.

In addition, Risk Management recently received and is considering a contract proposal for a field intervention program whereby nurses would assist injured employees back to modified and regular work and develop modified work programs.



It is commonly understood that contact between the employee's physician and a medical professional, rather than a civilian, yields better results. Thus, in our opinion, the City should reconsider the role of Occupational Health Services in the area of assessing work restrictions and contacting employees' physicians about those restrictions.

### **Outside Work Permits**

City employees may not engage in any outside work activity without first obtaining approval from the Director of Human Resources acting on behalf of the City Manager. The Personnel Administrative Manual sets out the administrative policy and procedures for regulating outside work permits, including a City Physician review to *"determine if [the] applicant can physically perform both City and outside work activities."* According to the City Physician, he has not received any such referrals. In practice, approval of work permits is at the discretion of individual department heads.

In our opinion, an employee who takes disability leave from work due to a work-related illness or injury should either cease outside work or be required to obtain a medical opinion that outside work will not interfere in any way with the employee's recovery. Therefore, we recommend that Workers' Compensation notify claimants who are taking or are expected to take disability leave that (1) a medical opinion must be obtained stipulating that the employee's outside work will not interfere in any way with the employee's recovery and (2) the employee's outside work permit will be revoked if such work will inhibit the claimant's recovery.

The Disability Claims Task Force's draft handbook for departmental workers' compensation liaisons, revised June 1994, includes the following guidelines for review of outside work permits:

*Each time an employee goes off on disability, the Liaison should verify if the employee has an outside work permit on file. If so, the adjuster should be notified and the employee's work permit may be suspended depending on the department's policy. If the work permit is suspended, an application for another work permit may need to be resubmitted. Normally, a work permit is suspended when the work being performed is similar to the employee's regular job or when the work will inhibit recovery.*

Our review revealed that the Human Resources Department cannot easily provide Workers' Compensation with a listing of active work permits. As a result, it falls on departments to review the work permits of employees with open workers' compensation claims to assess whether outside work activities could be aggravating the employee's condition. In addition, in our opinion, adjusters should review the work permit status of anyone filing a workers' compensation claim and enforce the City's policy on work permits.

**The City Should Improve Intracity Coordination  
And Communication Regarding Modified Duty**

The Workers' Compensation Program has recognized that

*Communication between workers' compensation and the departments has to be improved. Departmental concerns range from proper completion of time sheets to the manner [in] which employees proceed through the system and return to duty.*

In response to these concerns, an employee in each department was to be designated and trained as a liaison to the Workers' Compensation Program who would also assist with identifying potential modified duty positions.

In addition, supervisors and departments need information about specific work restrictions to be able to suggest modified duty for injured employees. However, medical information is filed with Workers' Compensation and is not available to the employee's department. To bridge the City's information gap, the Police Department has suggested early and routine use of a medical restriction form which specifically asks the physician for diagnosis, prognosis, and work restrictions.

Finally, routine Workers' Compensation release of medical restrictions to employees' supervisors has been referred to the City Attorney for an opinion on the confidentiality of medical restrictions. The Americans With Disabilities Act limits disclosure of employee medical information on a "need to know" basis. However, that includes supervisors and managers because they need to know medically necessary restrictions on the work or duties of an employee in order to make accommodations and/or modify the job. It seems reasonable that work restrictions would also fall into this category. We recommend that Risk Management devise a way to release medical restriction information to those supervisors who are responsible for managing employees with such restrictions.

#### **Disability Management Teams**

Once work restrictions are known, coordination and communication between medical professionals, Workers' Compensation, employees, and supervisors can facilitate expanding modified duty and part-time work. Specifically, supervisors can reduce and modify duties to accommodate injured employees and facilitate their return to work.

Disability leave policies were established as a protection for employees--not an entitlement program. All communications within the organization, from the top on down, should set the same tone. The City's message should be clear: You should be at work unless complete bedrest is required or you are totally unable to do any kind of work. If you can do some work, you should seek assistance to modify your own job or find another job that can be modified to fit your work restrictions.

Experts advocate the establishment of disability management teams that include staff from workers' compensation, medical services, personnel and benefits, safety, and the employee's immediate supervisor. These teams should meet on a monthly basis to bring everyone together on a case. In the past, supervisors were frequently left out of discussions when, in fact, according to Business & Health,

*The disabled employee's immediate supervisor is also an important member of the team. He or she can convey the fact that the employee is missed and needed, and help identify opportunities for the employee to return to work, even if only on a limited basis. The supervisor is also the person who best knows what the employee was able to do before he or she became disabled, as well as what will be needed to accommodate the employee within the department.*

For example, the city of Oakland's disability review committee meets monthly to go over the current listing of all injured people in the city. The city physician is at the meetings to (1) assess the medical basis for temporary disability, (2) assess work restrictions, and (3) assist with modifying duties and workstations in order to return people to their own jobs.

### *In-House Vocational Rehabilitation Programs*

Some organizations have established in-house rehabilitation programs as an alternative to using outside organizations to provide vocational rehabilitation. These in-house programs aggressively retool employees' jobs or retrain them for other jobs within the organization as soon as it becomes clear that the employee's work restrictions are permanent. These in-house programs reduce the duration of both temporary disability and modified duty, reduce outside vocational rehabilitation expenses, and allow the organization to spend training dollars in areas that directly benefit the organization.

The Labor Code requires that the city must offer an employee vocational rehabilitation benefits when it is known that the employee will probably not be able to return to his/her prior position, or after 180 days of temporary disability--whichever occurs first (delays can be requested). According to the Workers' Compensation Procedures Manual, after 90 days of temporary disability, the employee's department completes a description of the employee's job duties. Using this description of job duties, a Workers' Compensation adjuster asks the employee's treating physician if the employee is a Qualified Injured Worker (QIW). If the employee's physician cannot say that the employee is a QIW, the case is reviewed again after a total of 180 days of temporary disability. When a physician designates an employee as a QIW, or after 180 days of temporary disability, the employee is eligible for City-paid vocational rehabilitation. San Jose spent nearly \$700,000 on vocational rehabilitation in 1992-93.

During our audit, we noted other cities that have successfully retrained employees for other jobs within the organization. For example, the city of Long Beach retrained a permanently injured refuse worker to fill an available clerical

position. The city solicited the employee's resume to determine what other city job might be suitable. Personnel then sent out a notice of availability to all departments. In Long Beach, departments that hire employees through the in-house rehabilitation program get a \$5,000 hiring bonus from risk management to use for safety-related items.

Similarly, in San Diego, an in-house rehabilitation committee looks at each QIW case to recommend (1) modifications to the employee's current job or (2) rehabilitation for another job within the city. In keeping with this policy, Human Resources provides hiring departments with rehabilitation lists as well as certification lists. Departments must interview equally from both lists. If an employee can be retrained to a new position within the city, then training can be targeted to provide precisely the skills the employee will need in his or her new position. In this way, the money that is spent on vocational rehabilitation directly benefits the organization as well as the employee. In large measure, the program has been successful because it provides direct cost savings to the hiring department by paying for the new employee's training expenses.

New legislation further expands the employer's ability to place employees in permanent modified duty positions within the organization instead of paying for vocational rehabilitation to train an employee for a position outside the organization. Accordingly, Workers' Compensation and the Human Resources Department will be preparing listings of possible permanent modified duty positions. Some changes to City policy would be required to give priority status to employees with QIW status. The Personnel Administrative Manual already provides for alternative hiring practices. For example, it states in part that *"As an alternative to appointment from any eligible list, a vacancy may be filled by transfer of a regular employee."* Furthermore, the City's retirement system also

has an alternative employment program whereby a retired employee can return to work within the City and take a lateral or lower job with the retirement system offsetting any reduction in the retiree's income.

In addition, according to Business & Health,

*Early intervention by a rehabilitation specialist also helps set realistic expectations for the employee and his or her family... It offers a psychological benefit to the employee, as well. Letting the employee know that he or she is a valuable person and is missed at work provides motivation and helps stave off the sense of isolation that can result from being away from the workplace for any length of time.*

In one study, referring employees for rehabilitation before they reached the end of their medical treatment reduced employee recuperation time by four months, easily offsetting the cost of the rehabilitation consultations.

**The City Should Provide Departments  
With Better Information Regarding The Cost Of Disability Leave**

Supervisors and co-workers feel the pinch when an employee is out on disability leave. Even abbreviated uses of disability leave can be disruptive to department operations. However, without adequate and timely information about disability leave usage, the aggregate effect on departments and the City's work force may not be obvious. Our review revealed that information about disability leave and modified duty usage is not readily available to departments.

Nationwide, the evidence seems clear that charging disability expenses back to departments is a good way to get a supervisor's attention. According to one researcher, "*when . . . [supervisors] realize they could get 70% from someone, and that they're now paying in full and getting nothing, they have greater incentive to bring employees back to work.*" In the City's case, even though departments **are**

paying for disability leave out of their budgets, they may not know it. In fact, we observed a fairly widespread misconception within the City that the Workers' Compensation Fund pays for disability leave.

Recently, the Finance Department began distributing reports of workers' compensation costs to all departments. However, Finance prepares the reports from the Workers' Compensation claims database which does not include DLS expenses. In 1992-93, DLS expenses were more than 13 percent of total workers' compensation costs. In addition, the City's Safety Officer recently began preparing Health of the Organization reports which show trends in Citywide sick leave and disability leave usage. However, these reports also do not show total costs.

In our opinion, Risk Management should also distribute information about the total cost of disability leave in terms of dollars and lost FTEs. By so doing, the magnitude of the lost employee time due to disability leave would be highlighted. The City has already taken this approach with employee overtime. Specifically, the City recently began preparing quarterly overtime reports that summarize Citywide overtime costs, compare overtime costs between periods, and discuss reasons for overtime costs and alternative cost containment programs. These reports have had the desired effect of increasing the visibility of overtime expenses.

The Payroll Division runs Citywide biweekly reports of current and year-to-date disability leave payroll costs for each employee by department. However, Payroll sends copies of these reports to only Workers' Compensation and the Police and Fire Departments. In our opinion, expanding the biweekly distribution of these disability leave payroll reports to all affected departments would facilitate monitoring of disability leave on both an individual and department-wide basis.



## **CONCLUSION**

The City's disability leave usage is much higher than the average for other California jurisdictions. As a result, the City should aggressively pursue an early return-to-work policy which stresses expanded use of modified duty and better intracity coordination. In addition, the City should develop better information regarding the cost of disability leave and refer the issue of restructuring employee disability leave benefits to the newly formed Human Resources Organization Development Team to reduce the cost of disability leave in terms of dollars and lost staff time.

## **RECOMMENDATIONS**

We recommend that the City Manager:

### **Recommendation #1:**

Designate workers' compensation liaisons in all City departments to coordinate (a) communication between the departments and Workers' Compensation adjusters, (b) approval of disability leave benefits, (c) job site modifications, and (d) modified duty positions. (Priority 3)

In addition, we recommend that the Workers' Compensation section:

**Recommendation #2:**

Establish disability management teams which will meet periodically to evaluate the status of employees who are currently on disability leave or modified duty. (Priority 3)

**Recommendation #3:**

Distribute biweekly payroll listings of disability leave taken and its cost to affected departments. (Priority 3)

**Recommendation #4:**

Provide claimants, departmental workers' compensation liaisons, and timekeepers with copies of disability leave approval forms. (Priority 3)

**Recommendation #5:**

Establish and coordinate a Citywide modified duty placement mechanism to accommodate those employees whose departments cannot comply with the employee's work restrictions. (Priority 2)

**Recommendation #6:**

Notify claimants who are taking or are expected to take disability leave that (1) a medical opinion must be obtained that stipulates that outside work will not interfere in any way with the employee's recovery and (2) the employee's outside work permit will be revoked if such work will inhibit the claimant's recovery. (Priority 3)

**Recommendation #7:**

Revise the modified duty form letter to require physicians to be more specific regarding work restrictions, provide departmental workers' compensation liaisons and/or employee supervisors with those restrictions, and establish procedures that limit disclosure of this information on a "need to know" basis. (Priority 3)

**Recommendation #8:**

Provide City supervisors and timekeepers with clearer instructions regarding approval authority for disability leave. (Priority 3)

**Recommendation #9:**

Establish comprehensive internal procedures to ensure that the Workers' Compensation section approves each City employee's use of disability leave. (Priority 2)

**Recommendation #10:**

Use the workers' compensation claims database to prepare accident logs that satisfy Occupational Safety and Health Administration requirements. (Priority 3)

Further, we recommend that the Human Resources Department:

**Recommendation #11:**

Direct the Human Resources Organization Development Team to address the issue of salary continuation benefits exceeding 100 percent of pre-injury net pay. (Priority 2)

We also recommend that the Workers' Compensation section and the Human Resources Department:

**Recommendation #12:**

Establish an in-house vocational rehabilitation program to (1) find appropriate replacement jobs and/or permanent modified duty positions within the City organization for permanently disabled City employees and (2) provide training for those employees in their new positions. (Priority 3)

**Recommendation #13:**

Assess and clarify the relationship between Occupational Health Services and Workers' Compensation as regards work permits, work restrictions, and modified duty and revise the Personnel Administrative Manual accordingly. (Priority 3)

## FINDING II

### **A COMPREHENSIVE WORKERS' COMPENSATION COST CONTAINMENT PROGRAM COULD REDUCE THE NUMBER OF WORKERS' COMPENSATION CLAIMS FILED AND THE COST OF THOSE CLAIMS THAT ARE FILED**

The state of California mandates what workers' compensation benefits the city of San Jose (City) must pay to its employees with work-related injuries or disabilities. However, our review revealed that there are numerous workers' compensation cost containment opportunities of which the City is not availing itself. Specifically, we identified the following:

- The City's average Workers' Compensation adjuster case load is 353-- which is 175 percent higher than the state's recommended level and higher than other jurisdictions we surveyed;
- The City does minimal utilization review;
- The City conducts few investigations into questionable claims;
- Permanent disability advances are made without supervisory review;
- The Workers' Compensation Procedures Manual is outdated;
- Workers' Compensation charges to City departments are not based on actual costs;
- Workers' Compensation adjusters contact employees within their goal of 48 hours less than 20 percent of the time;
- The City does not have an adequate follow-up program for employees who file claims;
- Not all City departments have workers' compensation liaisons; and
- Coordination between departments, Workers' Compensation, the City's Safety Officer, and the City's retirement systems needs improving.

As a result, San Jose (1) has a higher percentage of costly litigated cases than other jurisdictions, (2) has a large number of multiple claims, (3) is not closing cases as quickly as it should, (4) may not be identifying fraudulent claims, and (5) is not getting employees back to work as quickly as it could. In our opinion, the City should provide Workers' Compensation with additional resources. In addition, the Administration and Risk Management should expand its cost containment program for workers' compensation. By so doing, the number of workers' compensation claims can be reduced along with the cost of those claims that are filed.

#### **Workers' Compensation Benefits And Expenses Are Mandated By State Law**

State workers' compensation law mandates the amount and timing of workers' compensation and disability benefits. State law, the state Division of Workers' Compensation, and the state Workers' Compensation Appeals Board regulate the liability, criteria, and payments for work-related illnesses and injuries. In addition, state fee schedules regulate the amount that physicians and others can charge for workers' compensation medical procedures.

The intent of the legislation was to institute a no-fault system that was to be liberally construed in favor of the employee within established employer liability limits.

*The basic philosophy behind workers' compensation is that industry should provide protection as a cost of doing business and that benefits should be afforded, within defined limits, regardless of the fault of any person. For this reason, in a compensation case the defenses of contributory negligence, assumption of risk, and fellow-servant rule are not available to the employer. The law, in turn, provides the employer with protection against negligence suits based upon industrial injuries if the employer has provided for compensation benefits.*

Thus, employers must provide all necessary medical treatment following a work-related illness or injury--basically without limitations. According to one industry publication,

*Workers' compensation is the last bastion of virtually unregulated, fee for service medicine. The cost containment tools available in other health care delivery systems are generally not available in workers' compensation. There can be no co-payments, no deductibles, no coverage limits, and no ability to manage care beyond thirty days.*

In 1992-93, the City paid approximately \$14.8 million in workers' compensation benefits and disability costs. Approximately 43 percent of that amount, \$6.4 million, was paid directly to claimants. Another 45 percent, \$6.7 million, was paid to vendors--primarily physicians and lawyers. Table V shows the types and total amounts of these payments.

**TABLE V**  
**WORKERS' COMPENSATION COSTS 1992-93**

Usual Payee	Type Of Payment	Amount	Percentage
Claimants	Permanent disability	\$2,539,925	43
	Disability leave supplement	1,956,713	
	Temporary disability	1,032,087	
	Other disability benefits	590,238	
	Vocational rehabilitation	<u>320,840</u>	
		\$6,439,803	
Physicians and Medical Providers	Treatment	\$4,855,115	37
	Medical-legal reports	<u>557,479</u>	
		\$5,412,594	
Attorneys, Consultants, and Trainers	Legal expenses	\$479,610	8
	Claimant attorney fees	328,172	
	Vocational rehabilitation	<u>372,783</u>	
		\$1,180,565	
Private Investigators	Investigations	\$100,503	1
City Employees and Operating Costs	Administrative Costs	\$1,663,447	11
Total		\$14,796,912	100

The City's Workers' Compensation adjusters are responsible for the efficient and cost-effective delivery of benefits. The Workers' Compensation Procedures Manual outlines adjusters' responsibilities. Specifically,

*When the notice of claim is received, it is the adjuster's responsibility to investigate and resolve assigned claims, promptly providing all benefits due City employees in an efficient and cost effective manner including but not limited to:*

- 1. Forty-eight (48) [hour] contact with the injured employee. This contact is to obtain necessary information about the injury, to explain various benefits, and to help the employee understand how the Workers' Compensation system functions.*
- 2. Appropriate investigation of all reported claims.*
- 3. Authorization of proper benefits.*
- 4. Anticipation and resolution of problems within claim files.*
- 5. Pro-active management of assigned claims from inception to resolution.*
- 6. Proper organization and prioritization of workflow to produce an acceptable and timely work product at a reasonable cost.*
- 7. To develop a knowledge of and working relationship with employees, departments, physicians, attorneys and others affecting the claims process.*

### **Cost Containment Opportunities**

The workers' compensation system is a complex and entangling maze of rules and regulations. For example, there is general agreement that the managed care techniques used in the group health insurance system would have a profound effect if they could be imported to the workers' compensation system. However, workers' compensation insurance programs are not directly comparable to group health insurance programs. Specifically,

*Workers' compensation insurers provide integrated management of medical and disability components with frequent litigation and essentially no limits on liability. Group medical insurers manage only medical costs within contractual limits on liability, and litigation plays almost no role in benefit delivery.*



Nonetheless, employers across the state are experimenting with a variety of cost containment measures. In keeping with this trend, in March 1993, the City's Finance Department presented a cost containment proposal to the Finance Committee of the City Council. The proposal included the following recommendations:

- Implementation of the City's Safety Program through establishment of
  - A formal City policy on employee safety,
  - Open communications up and down the organization,
  - Scheduled inspections and evaluations,
  - Accident investigations,
  - Training programs,
  - Improved record keeping,
  - Recognition programs, and
  - Citywide and departmental safety plans and safety committees.
- Medical cost reduction through
  - Contracting with a preferred provider organization to achieve reduced rates for medical services,
  - Contracting for medical bill review of physician and hospital bills to ensure the City is not being charged in excess of established state guidelines,
  - Contracting for utilization management and review to reduce unnecessary physician visits and unwarranted treatment, and
  - Contracting with a diagnostic testing organization to achieve reduced rates for magnetic resonance imaging (MRI) and computerized tomography scans (CT scans).

- Reducing adjuster case load through
  - Transferring clerical duties to claims assistants who would be freed from medical bill review duties and
  - Purchasing additional personal computers capable of accessing the claims database.
- Improving communication with departments by designating workers' compensation liaisons and establishing a disability task force.
- Increasing efforts to avoid system abuse through use of a fraud checklist and referring cases to the state's new Bureau of Fraudulent Claims.

Our review revealed that several of these components are now in place and may be responsible, at least in part, for recent declines in the expected number and cost of workers' compensation claims. For example, the City has recently contracted with a preferred provider network and for medical bill review. According to the contractor invoices, the net savings to the City has been an average of \$120,000 per month, or approximately 27 percent of reviewable charges. However, a large portion of this "savings" derives from adjusting medical bills to state-mandated payment guidelines. The City previously did its own bill review but did not keep records showing the amount of money saved.

Nevertheless, more than a year later, several of the components of the proposed cost containment program have not yet been implemented. In addition, our review revealed that there are numerous other workers' compensation cost containment opportunities of which the City is not availing itself.

**Adjuster Case Loads Are Higher Than Recommended  
By The State And Higher Than Other Jurisdictions We Surveyed**

Workers' Compensation adjuster case loads continue to be a problem. The state's Standards for Self-Insurance in California include the following:

*Claims auditing experience demonstrates that a monthly indemnity caseload in excess of 200 cases for each journeyman claims person is detrimental to the effectiveness of the benefit delivery system. Therefore, it is strongly recommended that the caseload per claims examiner does not exceed 200 indemnity cases, particularly in light of the recent statutory changes in California's workers' compensation system.*

Although the state recommends a monthly indemnity case load of 200 claims for each adjuster, San Jose's eight adjusters were handling an average of 353 open indemnity claims as of February 1994. Thus, San Jose's average adjuster case load is more than 175 percent higher than the state-recommended level.

As Table VI shows, the number of workers' compensation claims has increased over the last decade, even though the number of claims filed per year has decreased since 1990-91. In addition, the number of open indemnity claims at year-end has increased from 1,597 claims in June 1985 to more than 2,700 claims in June 1993.

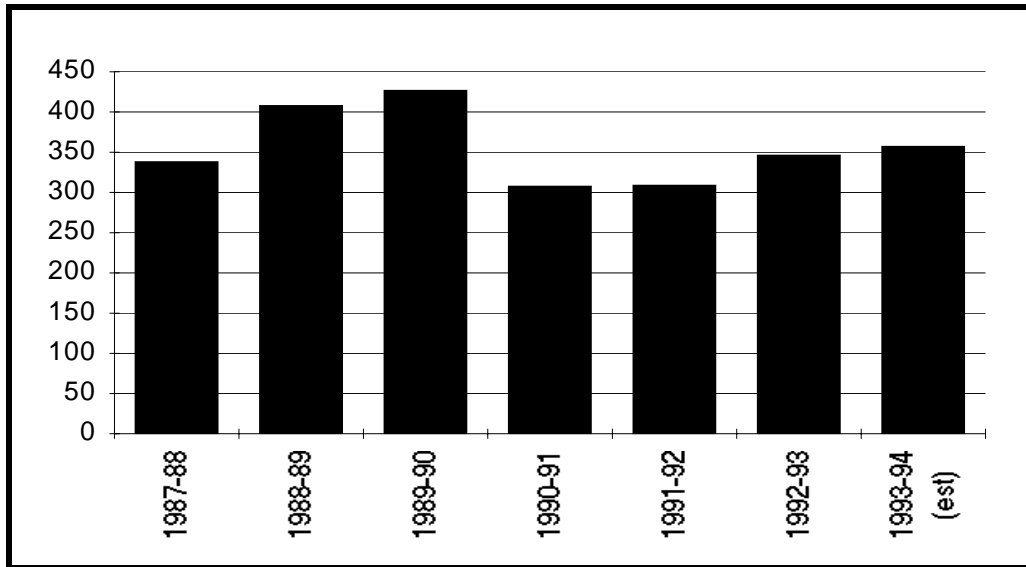
**TABLE VI**  
**NUMBER OF WORKERS' COMPENSATION CLAIMS**  
**REPORTED DURING 1984-85 TO 1992-93**

<b>Fiscal Year</b>	<b>Number Of Claims Filed</b>	<b>Average Number Of Employees</b>	<b>Average Number Of Claims Filed Per Thousand Employees</b>	<b>Number Of Open Indemnity Claims At Year-End</b>
1984-85	1,191	4,102	290	1,597
1985-86	1,273	4,605	276	1,457
1986-87	1,481	4,529	327	1,400
1987-88	1,518	5,487	277	1,824
1988-89	1,555	6,553	237	2,523
1989-90	1,708	7,218	237	2,798
1990-91	1,846	7,354	251	2,513
1991-92	1,712	7,733	221	2,500
1992-93	1,640	6,288	261	2,734

**SOURCE:** *State Self-Insurer's Reports*

Adjuster case loads hit a high of 427 open indemnity claims per adjuster at the end of 1989-90. At that time, the City had five adjusters. The City authorized three more adjuster positions in 1990-91, dropping indemnity case loads to 308 per adjuster. However, indemnity case loads, which were 335 per adjuster at the end of February 1993, climbed to 346 per adjuster by the end of June 1993 and to 353 per adjuster by the end of February 1994. To compensate for the additional workload, management has been shifting the handling of medical-only cases to the support staff.

**GRAPH I**  
**OPEN INDEMNITY CLAIMS PER ADJUSTER**  
**FROM 1987-88 TO 1993-94**



San Jose's current average case load of 353 indemnity claims per adjuster is also higher than the other jurisdictions we surveyed. Table VII compares the number of open indemnity claims per adjuster in several self-insured California cities.

**TABLE VII**  
**NUMBER OF OPEN INDEMNITY CLAIMS PER ADJUSTER**  
**IN SAN JOSE AND OTHER CALIFORNIA CITIES IN 1994**

City	Indemnity Claims Per Adjuster	Number Of Adjusters
San Jose	353	8
San Diego	324	10
Long Beach	290	5
Sacramento	244	8
Oakland	234	5
Recommended Level	200	

### **There Are A Variety Of Minor Errors In The Files**

Our review of claims files revealed a variety of minor errors and omissions in the claims files and discrepancies with the computerized database that we attribute to a heavy case load. For example, Workers' Compensation was unable to locate 6 of the 79 files (8 percent) in our sample of claims filed during a three-year period. It should be noted that all six claims were listed in the database as closed, medical-only cases. Nonetheless, hard copy documentation in the files is necessary to meet state requirements. Failure to provide the state with closed claim files within 60 days of request carries a penalty of \$100 for each file not provided. In addition, we noted that the Doctor's First Report was not in 7 of the 73 files we were able to review during our audit (10 percent).

### **The City Does Minimal Utilization Review**

Our review revealed infrequent use of second opinions regarding medical procedures. We noted one case where an employee did not want to have a physician-recommended surgical procedure and found another physician who recommended an alternative treatment. As a result, the City paid less for the office visit and nonsurgical alternative treatment. However, our review revealed that adjusters are not actively encouraging employees to get second opinions when surgery is initially recommended. Because the employee's injury must be stabilized before the City can close the claim, industrial injury physicians often have a different focus than general practitioners. Namely, with industrial injury physicians, the idea is to fix the problem and stabilize the employee's injury no matter what the cost. In our opinion, Workers' Compensation adjusters should encourage employees to get second medical opinions when physicians prescribe costly medical procedures and, when necessary, consult with the City Physician

regarding the advisability of obtaining a second opinion. In addition, Workers' Compensation should initiate comprehensive utilization review.

Workers' Compensation currently contracts for basic utilization review of hospital and MRI bills. Otherwise, Workers' Compensation adjusters are responsible for monitoring employee medical examinations and treatments. As experienced as these adjusters are, they are not trained medical personnel and simply do not have the expertise necessary to assess the appropriateness of one course of treatment over another. As a result, questionable examinations and referrals may go unchallenged. For example, in one case, the physician referred the claimant to two separate specialists. Currently, the only defense the City has against over referring is its Workers' Compensation adjusters who must evaluate the appropriateness of these referrals. We are aware of only one case where Workers' Compensation contracted with a medical management nurse to monitor the employee's treatment and recovery.

#### **The City Conducts Few Investigations Into Questionable Claims**

With indemnity case loads of more than 350 per adjuster, the City's adjusters have limited time to investigate claims. It is commonly understood that

*The claims handler is the risk manager's first line of defense in combating fake claims . . . . The average caseload for a workers' comp. examiner ranges from 200 to 225 lost-time claims. Any adjuster with a higher caseload may not have enough time to conduct a proper investigation or review claims for improprieties.*

Although outright fraud has been estimated to constitute only 5 percent to 7 percent of losses, it has *"been estimated that cheating in the workers' compensation system nationwide (which encompasses not just outright fraudulent claims, but also malingering and system amplification) constitutes 20% of all claims."* Of the risk managers we interviewed, all agreed that especially among

government employees, the most common problem is abuse--in other words, employees who tend to exaggerate an injury and take all allowable disability leave.

Nonetheless, our review revealed that Workers' Compensation authorizes only about 5 to 10 outside investigations per month for a total of about 100 investigations per year at a cost to Workers' Compensation of approximately \$100,000 per year. This is approximately 6 percent of claims filed during an average year. For example, in 1992-93, total investigation costs, including interviews, field investigations, and video surveillance, were less than 0.7 percent of total claims costs. Furthermore, most of the City's investigations are to determine liability for claims rather than to investigate abuse. Specifically, most investigations have been to determine whether the reported illness or injury occurred while the employee was acting within the course of his or her employment. Moreover, only two investigations have resulted in criminal prosecution.

### **Denial Of Claims**

It is commonly understood that one of the most important decisions an adjuster can make is whether to accept or deny a claim when it is initially filed. Denial of claims is not to be taken lightly; there are penalties for wrongfully denying a claim. Furthermore, when the workers' compensation system was established,

*Employers traded off long established common law defenses for a no fault system of qualifiable benefits. Employees traded off their right to seek civil/punitive damages in exchange for this no fault system . . . . Any consideration to deny Workers' Compensation benefits should be tempered with the reality that placing the employee outside the Workers' Compensation system may subject the employer to potential civil liabilities which far exceed the limited benefit scheme in Workers' Compensation.*



In 1992-93, Workers' Compensation denied 122 claims, or about 7 percent, of the claims that were filed. Nonetheless, our sample turned up at least one instance where the employee's condition may not have been work-related and the claim might rightfully have been denied but was not. In this case an employee sought both initial and follow-up treatment in the emergency room for an eye inflammation. The question is not whether the employee was sick, but rather whether the employee's regular City medical insurance and sick leave should have covered the employee's medical expenses and time off work instead of Workers' Compensation benefits.

Our review also revealed that there is no process in place for notifying departments that claims have been accepted or denied. As a result, even supervisors, who must submit documentation about the alleged accident when the claim is filed, are not notified of the outcome. According to the Workers' Compensation Manager, new procedures will inform supervisors when claims are denied or investigated.

### **Rethinking The Compensability Of Some Claims**

It should also be noted that there is considerable speculation that workers' compensation coverage *"has been expanded beyond reasonable limits to include ailments that are really the result of the aging process and the stresses of daily living."*<sup>10</sup> A recent conference advised that instead of waiting for state legislatures to reword injury standards and definitions of compensability, employers should attack the problem by (1) taking a strong stance on drug and alcohol use,

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<sup>10</sup> Business Insurance, May 1993 (abstract).

(2) reducing job dissatisfaction and employee boredom, and (3) not automatically taking responsibility for all ailments.

**Permanent Disability Advances Are Made Without Supervisory Review**

In addition to stipulating the amount of the permanent disability (PD) award to a claimant, state law stipulates the timing of the payment including advance payments prior to final determination of the PD award amount. In particular,

*If the injury causes permanent disability, the first payment shall be made within 14 days after the date of the last payment of temporary disability indemnity. Where the extent of permanent disability cannot be determined at the date of the last payment of temporary disability indemnity, the employer nevertheless shall commence the timely payment required by this subdivision and shall continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been determined until that amount has been paid.*

Our review of a listing of PD advances during 1992-93 revealed that most of these biweekly payments were for \$280 (the state-mandated amount). We also noted several lump-sum payments followed by a series of \$280 checks on a biweekly basis. The largest single check to an employee we saw was for \$16,485. Nonetheless, our review revealed that Workers' Compensation has no procedures in place to obtain supervisory approval upon commencement of PD advances.

Furthermore, our claims review revealed one case of a PD overpayment, one potential overpayment, and one possibly inappropriate payment. In the first case, a \$3,000 PD overpayment occurred when a \$3,000 advance payment was not subtracted from the final award amount prior to payment of the final award. In the second case, a \$4,200 advance payment had been coded as part of a lump-sum historical payment at the time Workers' Compensation was going through a computer conversion. Consequently, this \$4,200 advance payment did not show

up on the claim's schedule of payments. As a result, the adjuster could have overpaid the claimant if we had not brought it to the adjuster's attention. In the third case, an adjuster approved a \$1,500 PD advance, but we could not find any documentation in the file that permanent disability was being negotiated or that a physician's evaluation had been requested. We did see notations in the file that suggested the claimant was having financial difficulties.

Proper approval is necessary to provide assurance that cash advances to claimants are appropriate as to potential future awards. In addition, it is difficult to recover overpayments through the courts. Moreover, because one City employee authorizes cash payments for other City employees, supervisory approval should be required. Therefore, the new Workers' Compensation Procedures Manual should outline the policy and procedures for making PD advance payments and for supervisory approval of those advances.

#### **Application Of The 3 Percent Rule**

If the Workers' Compensation Appeals Board orders a lump-sum cash advance to an injured employee, *"the law provides that the employer is entitled to a 3% per annum discount as to each future weekly payment which the employer is required to pay in advance."* For example, a \$20,000 PD award would normally be paid at \$168 per week for 119 weeks. A 3 percent per annum discount would reduce the award by \$684. An \$80,000 death benefit would normally be paid at \$406 per week for 197 weeks. A 3 percent per annum discount would reduce the benefit by \$4,416. Workers' Compensation adjusters compute these discounts when specified by law.

However, in some cases, the employer and the claimant agree to settle and close a claim through a compromise and release (C&R) settlement and a lump-sum payment. In our opinion, adjusters should also estimate discounts when negotiating these lump-sum payments. In fact, C&R settlements *"often involve questions of rating permanent disability and computing probable present . . . value of the benefits."* The City entered into 35 C&R settlements totaling \$561,360 during 1993. A 3 percent per annum discount applied to that amount could be as much as \$15,330. It should be noted that this amount would be subject to negotiation as part of the settlement.

#### **The Workers' Compensation Procedures Manual Is Outdated**

Our review revealed other discrepancies in the Workers' Compensation Procedures Manual. The manual has not been revised since 1989 in spite of the fact that a computerized claims management system was installed in 1991. As a result, current written procedures reflect a predominantly manual claims processing system and do not reflect current practices and use of the Workers' Compensation computerized claims database. The Workers' Compensation Manager has started an update of the manual.

When Workers' Compensation updates its manual, it should also focus considerable attention on the problem of proper coding in the claims database. Our review revealed a variety of errors in informational database records that were due to lack of standardized input codes. For example, we were unable to distinguish life pension claims by code and we noted corrections to expenditure records were dated incorrectly. Some errors are undoubtedly the result of heavy case loads, as well as residual discrepancies from the massive data entry project several years ago

when Workers' Compensation installed a new computer system. Staff has since completed at least three major database cleanups.

In addition, we also noted that claims database listings of types of injuries were sometimes misleading. For example, we saw where Workers' Compensation entered a physician's diagnosis of a back strain into the database as a strain to multiple body parts. The City Physician has pointed out that standard medical codes for diagnosis (known as ICD codes) and medical procedure (known as CPT codes) are missing from the database. These codes need to be consistently entered if the claims database is to be used for standard epidemiological analysis and utilization review. Otherwise, medical professionals will be unable to review cases without the claim file in front of them.

#### **Charges To City Departments Are Not Based On Actual Costs**

The City allocates costs to departments through payroll rates which are based on the last three years' loss experience by payroll type. This is a commonly used method which distributes the varying workers' compensation costs of various occupations across the City. By using five payroll categories, payroll rates are evened out across smaller departments and become less volatile. However, these rates have not been recalculated for several years, and existing contributions have not been sufficient to cover expenses. In the City Auditor's *Audit of the City of San Jose's Investment of Workers' Compensation Program Fund Reserves*, we recommended that these payroll rates be adjusted annually.

In addition to payroll rates not accruing sufficient funds, they are no longer correctly apportioned between departments and/or job classifications. For example, at the time the payroll rates were last reapportioned in 1989-90, payments

on Police Department claims were estimated to be 42 percent of total payments and payments on Fire Department claims were estimated to be 31 percent of total payments. Payroll rates were based on this apportionment of costs. However, the apportionment of claims payments has changed dramatically. By 1992-93, Police Department claims payments rose to 47 percent of total payments, while Fire Department claims payments declined to 18 percent of total payments. Consequently, the use of the 1989-90 rates undercharges the Police Department and overcharges the Fire Department.

We contacted some jurisdictions that use more direct cost allocation systems and others that allocate charges strictly by department. For example, the city of San Bernardino has developed a system to directly charge each department's claims to that department. Whether allocating the budget burden of workers' compensation costs by department or by job classification, it is important that any cost allocation system gets the attention of those supervisors and employees who are best able to decrease claims and costs. Conversely, by not allocating costs back to departments in a fair and visible way, (1) departments are neither rewarded nor penalized for their workplace safety records and (2) workers' compensation costs escape the attention of management.

**Adjusters Contact Employees Within Their Goal  
Of 48 Hours Less Than 20 Percent Of The Time**

Early employee contact has been shown to reduce claims costs. The Workers' Compensation Procedures Manual recommends a 48-hour goal for initial contact with employees. However, based on our sample of claims filed in the last three years, we estimate that the 48-hour standard is met less than 20 percent of the time. It should be noted that the average response time in our

sample of claims was 12 days. Furthermore, because of heavy adjuster case loads, the Workers' Compensation Manager has restricted the 48-hour requirement to cases of hospitalization or long-term disability. Nonetheless, the Risk Manager informed us that, if it were possible, his goal would be to contact employees within 24 hours on all claims.

**The City Does Not Have An Adequate Follow-up Program For Employees Who File Claims**

Entering into the workers' compensation system for the first time can be a baffling experience for both the injured employee and the supervisor. Suddenly, all the old rules of medical insurance and time reporting no longer apply. In their place are workers' compensation rules and regulations comprising volumes of complex legal jargon and ratings tables. This is not a simple system.

Because of workers' compensation complexities, all employees should be provided with written information about what to do if they are injured on the job. This information should describe the workers' compensation benefits available to employees and the City's retirement program options. Immediately after a work-related illness or injury, the adjuster should be in contact with the employee and the supervisor to explain the next step. Anyone who is new to the system is certain to be bewildered by it.

Experts agree that proactive case management, cooperative attitudes, and close cooperation between adjusters and supervisors can reduce workers' compensation costs. According to one risk management consultant, employer attitude toward claims and employees can positively affect workers' compensation costs. Under this scenario, the employer needs to communicate concern and reinforce the employee's sense of belonging. The employee needs a personal

contact in risk management--a fellow employee showing concern, visiting the employee in the hospital, helping with family needs. This type of cooperation is designed to ensure that employees get a fair shake, employers get employees back to work, and employees are less likely to retain an attorney. Getting employees back to work is critical--the longer employees are out, the harder it gets to get them back to work. We are aware of one company that has a nurse on staff that follows up on all cases for light duty as a means to bring employees back to work.

According to an industry publication:

*Employer follow up programs can reduce the costs of workers compensation claims for companies. Many companies are suffering financially from the rise in the number and size of workers' compensation claims, but a follow-up program can contain and reduce costs by tracking employees from the time of accident through treatment and recovery to their return to the workplace. Follow-up programs give companies the opportunity to reduce claims, defuse potential lawsuits, and decrease lost worktime. Standex International Corp (Salem, NH) implemented a follow up program and has achieved savings of almost 50% in one year. A major component of Standex's program was to bring insurance documentation in-house.*

However well-intentioned or attuned to quality service they may be, the City's Workers' Compensation adjusters have heavy case loads. As a result, they cannot be expected to follow up on all claims in a proactive manner.

The state mandates time requirements for processing claims and payments. The City's Workers' Compensation Program has generally been quite successful at complying with these standards. According to Program records, of the 18,441 payments which were processed in 1991-92, only 100 were late. Furthermore, 34 of those late payments were in permanent disability compensation where timing is very difficult to judge. In addition, total state-mandated penalties (usually 10 percent of the late payment) were less than 0.06 percent of total payments in 1992-93. However, because Workers' Compensation adjusters



are overburdened with heavy case loads, they may be forced to push paper to meet timeliness guidelines and precluded from performing other important claims management tasks.

### **Not All City Departments Have Workers' Compensation Liaisons**

More than a year ago, the Finance Department proposed to the City Council that

*An employee in each department will be designated as the workers' compensation liaison. The liaison will be provided training regarding the workers' compensation program to include how employees proceed through the system and return to duty.*

However, as discussed in Finding I, our review revealed that not all departments have liaisons to Workers' Compensation. Only the Police, Fire, Streets and Parks, and Airport Departments have designated liaisons. It should be noted that any new liaisons will need to be trained. A desk manual outlining liaison responsibilities and providing claims-handling information would facilitate the training of new liaisons. The Disability Claims Task Force is currently reviewing a draft manual for liaisons.

Recently, Workers' Compensation has begun distributing semi-annual, Citywide workers' compensation summary reports to senior staff. These reports should be distributed to liaisons as well. In addition, the liaisons will need much more specific information including, but not limited to, a current listing of all open claims in their area of responsibility by claimant name, type of injury, status, and cost to date.

**Coordination Between Departments, Workers' Compensation,  
The City's Safety Officer, And The City's Retirement Systems Needs Improving**

By self-insuring, the City has an advantage in coordinating resources and benefit programs. However, the City has not always taken advantage of this relationship. For example, some jurisdictions who use a third-party administrator to administer claims have more regular and frequent contact with departmental personnel than the City's Workers' Compensation adjusters do. Workers' Compensation adjusters should be taking advantage of their close proximity to other City departments to balance workers' compensation benefits with other organizational priorities, coordinate investigations of claims with supervisors, and conduct claims follow-up. In addition, frank discussion between adjusters and department liaisons could (1) identify indicators of fraud, (2) separate malcontents and malingerers from legitimately injured workers, and (3) avoid making Workers' Compensation a refuge for problem employees.

Further, Workers' Compensation adjusters could help supervisors assess and investigate claims up front when they sign the claims forms. Additionally, departments may have information that the Workers' Compensation adjusters do not have. For example, pending disciplinary action--information which is not available to Workers' Compensation adjusters--is commonly described as a key workers' compensation fraud indicator. The City needs to establish policies regarding workers' compensation investigations. Further, when a department requests an investigation into a workers' compensation claim, the request should be honored if at all possible. Finally, there should be a follow-up procedure so that the department is notified of the status of any workers' compensation investigation. In fact, the Disability Claims Task Force has recommended a policy to allow the

release of the results of Workers' Compensation surveillance to the employee's department.

Our review also revealed that coordination of benefits between Workers' Compensation and the Federated Retirement System needs improving. Specifically, City of San Jose Municipal Code, section 3.28.1040, requires that if a Federated employee retires on a service-connected disability and is collecting workers' compensation benefits, the employee's retirement benefit is offset by the amount of workers' compensation benefits received. For purposes of calculating the offset, lump-sum benefit payments are translated into monthly benefit rates unless (1) the permanent disability is 100 percent or (2) the workers' compensation benefit is related to a different illness or injury. Workers' Compensation has agreed to begin producing and distributing to the Federated Retirement System the monthly reports of benefit payments to Federated retirees on service-connected disability.

Our review also revealed that because they constantly deal with the consequence of workplace accidents, Workers' Compensation adjusters have a wealth of knowledge about the City's safety issues. Yet, there is little communication between adjusters, the departmental safety committees, and the City Physician to assess the importance of these safety issues. Finding III deals with this issue in detail.

Furthermore, Workers' Compensation should be involved in a coordinated approach to ergonomic and safety-related improvements. In response to physician prescriptions, Workers' Compensation used its funds to purchase various equipment, such as ergonomic chairs and computer tilt arms, for injured employees. However, there has been some dispute about the ownership of the

chairs. Specifically, Workers' Compensation adjusters and employees have maintained that the chairs are the property of the employee and that the employee can take the chairs with them if they are transferred or leave City employment. Conversely, at least one department maintains that permanent workstation modifications should be the property of the City. Coordination between Workers' Compensation, the Safety Program, and departments is needed to resolve this issue and to ensure that limited City resources are used efficiently.

**San Jose Has A Higher Percentage  
Of Costly Litigated Cases Than Other Jurisdictions**

Our review revealed that attorneys represented City employees in at least 18 percent of the claims filed in 1992-93. Furthermore, San Jose had a significantly higher percentage of litigated claims than the other jurisdictions we surveyed as shown below.

<b><u>Jurisdiction</u></b>	<b><u>Litigated Workers' Compensation Claims In 1992-93</u></b>
San Jose	18%
San Diego	9%
Long Beach	8%
Oakland	2%

Further, in 1989, the statewide litigation rate for newly reported workers' compensation claims was estimated at 11.8 percent, and statewide litigation costs in 1988 were estimated at \$1.1 billion.

Many factors have contributed to high litigation rates. Fellow claimants frequently refer employees to lawyers. In at least one case, an employee told

auditors they got an attorney because they were unable to get a straightforward explanation of their benefits and options from Workers' Compensation personnel. Workers' Compensation adjuster delays in claims handling only exacerbates the situation. Early Workers' Compensation adjuster contact with claimants has been shown to be the key to decreasing the number of litigated cases.

Both employers and employees pay litigation costs. Thus, in spite of the fact that workers' compensation is supposedly a "no-fault" system, City employees pay about \$325,000 each year in attorney's fees and the City pays about \$480,000 each year in attorney's fees and other legal costs to litigate workers' compensation cases. For example, in 1992-93, attorney's fees totaled approximately 5 percent of total claims payments (\$700,000). In addition, the City paid \$70,000 in other litigation expenses including deposition fees and copying costs, plus \$560,000 in medical-legal expenses including required medical reports for PD ratings.

In addition, San Jose's rate of litigated workers' compensation claims has climbed from 9 percent in 1990-91, to 16 percent in 1991-92, to 18 percent in 1992-93. Meanwhile, the third-party administrator in Oakland has driven its litigation rate down from 8 percent in 1990-91 to 2 percent in 1992-93.

According to one industry publication,

*Litigated claims can be reduced by maintaining a good relationship between the employee and the employer. When employees feel that the company is antagonistic they are more likely to litigate.*

Workers' Compensation is initiating a customer call-back program. The Risk Manager, Workers' Compensation Manager, and two supervising adjusters will be surveying City employees, departments, providers, and attorneys on an

ongoing basis. If the call-back program is aggressively pursued, it may provide some answers as to the causes of San Jose's high litigation rate.

**The City Has A Large Number Of Employees Who File Multiple Claims**

Our review also revealed that some employees tend to file multiple claims. In our opinion, multiple claims are symptomatic of employees viewing workers' compensation benefits as an entitlement rather than a safety net.

Between July 1, 1992, and February 28, 1994 (a 20-month period), 174 employees filed three or more workers' compensation claims as shown below.

**TABLE VIII**  
**SUMMARY OF EMPLOYEES FILING MULTIPLE**  
**WORKERS' COMPENSATION CLAIMS**  
**FROM JULY 1, 1992 THROUGH FEBRUARY 28, 1994**

	<b><u>Number Of Employees</u></b>	<b><u>Number Of Workers' Compensation Claims Filed Per Employee</u></b>	<b><u>Total Workers' Compensation Claims</u></b>
	123	3	369
	28	4	112
	16	5	80
	4	6	24
	2	7	14
	<u>1</u>	9	<u>9</u>
<b>Total</b>	<u>174</u>		<u>608</u>

The 174 employees summarized in Table VIII filed a total of 608 workers' compensation claims from July 1, 1992, to February 28, 1994. These claims

represent 23 percent of the 2,700 claims that all City employees filed during that same period.

In our sample of 79 claims, we noted that employees who had multiple claims on file had filed 89 percent of the claims in our sample. In fact, each of the multiple claimants in our sample had an average of six other workers' compensation claims on file. Conversely, only 9 of the 79 claimants in our sample did **not** have other claims on file at Workers' Compensation. Overall, the 79 claimants in our sample had filed 526 claims of which 138 were still open/active at the time of our review.

According to Workers' Compensation adjusters, it takes hours of staff time to manage the cases of those employees with multiple claims. Each case involves setting up a file, making initial contact with the employee, setting initial reserve levels, setting up the file for regular diary review, reviewing benefit forms, contacting the medical provider(s) when necessary, determining disability status, and monitoring return to work. In addition, when multiple claims are involved (see Case #15 following), the Workers' Compensation adjuster needs to review prior claims filed and other current open claims; write a history of open claims if necessary; review various medical records; evaluate legal correspondence, the inter-relatedness of multiple injuries, and reserve amounts distributed among various open files; and communicate with the claimant's supervisor. Furthermore, in a complex case, the Workers' Compensation Manager also gets involved, and a legal opinion may be required.

### WORKERS' COMPENSATION CASE #15

February 1990 -- Employee strained his back climbing into fire truck cab. Claims database showed only \$47 in medical costs for this claim; however, according to his physician, the employee was unable to work for 11 days as a result of this injury. Because the employee is a firefighter, he received full pay for those days that he was scheduled to work. The case was still open as of February 1993 because it had been linked to other claims.

Total claims cost to date (including disability leave pay): \$1,243

Furthermore, this 16-year City employee has filed 28 other workers' compensation claims and filed his first claim three months after his date of hire (February 1978). These injuries include:

May 1978	Left ankle	February 1984	Left foot
August 1978	Head and back	August 1985	Back
December 1978	Exposure to toxic fumes	July 1986	Right shoulder
February 1979	Rash	October 1986	Right eyelid
September 1979	Right elbow	June 1987	Right ankle
June 1980	Back	August 1987	Left knee
April 1981	Right knee	July 1988	Left thigh*
August 1981	Right leg and upper thigh	September 1988	Back*
February 1982	Cumulative trauma	September 1988	Lower back*
	to ligament in heel	April 1989	Left knee*
December 1982	Smoke inhalation	July 1989	Back*
February 1983	Back	August 1989	Right knee*
July 1983	Lower back	December 1990	Right knee and back*
August 1983	Groin	June 1992	Strained knee*
January 1984	Lower back		

*\* These cases were all open and pending at the same time in February 1993.*

Employees who file multiple claims add additional burdens to an already overburdened system. For this reason, San Diego began a pilot program in 1993 in two divisions that had very high claims frequency. San Diego made it known that the city considered more than two claims a year excessive. The point was that the city is responsible for an employee's safety but that the employee shares that



responsibility. The San Diego safety officer interviews each employee who files more than two claims asking, "*What can we do to make your job safer for you?*" These interviews have heightened awareness about safety; they have also tightened monitoring of employees who file multiple claims. This communicates that "*they know we're watching.*" Since its inception, the pilot program has driven the average number of accidents down by 48 percent in one division and 25 percent in another.

In our opinion, departmental safety officers should interview each workers' compensation claimant for safety-related concerns and the City's Safety Officer or his or her designee should interview each claimant who files more than two claims in one year.

#### **The City Is Not Closing Cases As Quickly As It Should**

The Workers' Compensation Manager has two major goals for Workers' Compensation adjusters: (1) earliest possible closure of files and (2) earliest possible return to work for employees. Meeting these goals can help to reduce the case loads of both adjusters and clerks. However, San Jose appears to be slower in closing medical-only cases than in other jurisdictions. San Jose's standard for closing medical-only claims is six months. By comparison, the majority of cities in our survey expect most medical-only cases to close within 60 to 90 days. For example, San Francisco and Oakland automatically close medical-only cases after 60 to 90 days. Resolving and closing medical-only claims as quickly as possible can reduce claims costs and adjuster case loads. In our sample of 79 claims, the shortest time to close a medical-only claim was two months while the longest time was 20 months.

According to Workers' Compensation management, many of the City's medical-only cases are closed before the six-month standard. Typically, Workers' Compensation staff sends the claimant a closing letter if no bills for treatment are received for 30 days or more. Nonetheless, our review of claims database reports revealed that the average age of medical-only claims was almost six months as of February 1994. It should be noted that 39 percent of the medical-only claims were less than three months old, 29 percent were from three to six months old, and 16 percent were six months to one year old.

A common concern about enforcing early closure of claims is that increased litigation may result when claims are closed too early. However, San Francisco and Oakland close claims earlier than San Jose does and have fewer litigated claims. The Workers' Compensation Procedures Manual should require (1) review of medical-only cases every 30 days and (2) supervisory review of aging reports for medical-only claims.

#### **Aggressive Closing Projects**

Furthermore, an aggressive closing project can reduce case loads. For example, in Oakland an aggressive four-month closing project reduced average workers' compensation adjuster case loads by 22 percent--from 348 per adjuster to 270 per adjuster.

*The case closing project was an important step towards attaining improved program management. A reduction in open cases means lower case loads per claims examiner, fewer files managed by support staff, fewer errors in report statistics and a reduced assessment of Future Liability against the City. In a four month period, open cases were reduced from 1,740 to 1,350.*

Santa Clara County is currently engaged in a massive case closure project. At last count, the county had 5,500 indemnity cases and 2,800 medical-only cases

of which a large number had been inactive for a year or more. Santa Clara County brought in 12 temporary adjusters and supervisors to do closings over a 90- to 120-day project.

Closing projects require staff time, and Workers' Compensation does not have a budget for overtime. In our opinion, the Workers' Compensation Manager should either request funds for overtime or for hiring adjusters on a temporary basis to staff an aggressive closing project. The 1994-95 Proposed Operating Budget includes \$1,500 to establish an overtime budget.

### **Fraudulent Claims May Not Be Identified**

In 1993, Workers' Compensation adjusters began using fraud checklists to help flag fraudulent claims. Even with this checklist, Workers' Compensation adjusters are hard-pressed to identify fraudulent claims because (1) some types of claims are inherently difficult to assess for fraud, (2) adjusters have less and less time to investigate claims because of growing case loads, and (3) the number of so-called soft-tissue injuries which require special training to assess is increasing. Nonetheless, according to a recent article in National Underwriter magazine,

*If risk managers become more knowledgeable about the injuries routinely used as the basis of phony claims, they will obviously be more effective in controlling fraud. They should especially be aware that stress disorders and back and musculoskeletal injuries such as carpal tunnel syndrome require close examination. That's because the causes are often vague and recovery is easy to disguise. These problem claims must be promptly investigated. The injured employee's supervisor should immediately submit a detailed report on what happened. The claim should also be screened for medical or psychological malingering by expert consultants. If the case then goes to court, the claim will be easier to discredit.*

Increased attention to the problem of fraudulent workers' compensation claims led to the 1991 Workers' Compensation Insurance Fraud Reporting Act.

This Act provides that when an insurer knows or has reason to believe a person has filed a fraudulent workers' compensation claim, the insurer must notify the local district attorney's office or the Bureau of Fraudulent Claims within 30 days. The Act also specifies the method for "*reporting suspected fraudulent workers' compensation acts . . . .*"

Since 1991, Risk Management has referred four cases to the Bureau of Fraudulent Claims. The first two cases resulted in convictions, and the other two cases are pending. While four referrals seem insignificant, there is no way to quantify the deterrent effect these cases have on City employees.

It is commonly believed that convictions for workers' compensation fraud or even the threat of investigations will have a deterrent effect on the number of workers' compensation claims filed. For example, according to the aforementioned article in National Underwriter magazine,

*Video surveillance is often the risk manager's most lethal weapon in fighting exaggerated claims, particularly in back-injury cases. In Pittsburgh, for example, the city government reported a 15 percent drop in claims after it covertly televised supposedly injured police officers and firefighters working at second jobs and playing basketball. In fact, the vast majority of claims in which strenuous physical activity is recorded on tape will settle prior to trial.*

At least one departmental workers' compensation liaison feels the City should step up its efforts to investigate claims in order to refer more cases to the Bureau of Fraudulent Claims for possible prosecution.

#### **Coordination Of Investigations With Supervisors**

Workers' Compensation staff conducted a training session at the monthly Manager's Meeting in August 1993. This training outlined the supervisor's role in the workers' compensation process including the indicators of questionable claims.

If a supervisor finds a claim questionable, he or she is to notify Risk Management and discuss a plan of action with the Workers' Compensation adjuster. However, our review revealed that when a supervisor requests an investigation, there is no process in place to keep supervisors apprised of the status of the investigation. Workers' Compensation has recently initiated a new procedure to track investigation requests and notify departments once the district attorney has decided whether to initiate criminal action. While this new procedure is a step forward, supervisors may still have to wait a long time for any feedback.

It should be noted that California's Labor Code forbids "*discrimination by an employer against an employee for filing a workers' compensation claim, testifying in a compensation proceeding, or receiving an award or settlement.*" In our opinion, Workers' Compensation should develop a process to keep supervisors apprised of the status of investigations that does not violate the precepts of the Labor Code.

In addition, our review revealed that coordination between Workers' Compensation and departments and the speed with which investigations are initiated can be improved. For example, we noted one case where a supervisor requested an investigation into a questionable claim but an investigator did not interview the claimant until after she had returned to work. In another case, after considerable delay, Workers' Compensation sent out an investigator to videotape a claimant. However, the videotaping was scheduled for a day the claimant was not scheduled to work anyway. Consequently, the claimant was not technically on disability leave and the videotape was inadmissible as evidence.

### **Use Of In-House Investigation Units**

California's Insurance Code mandates in-house investigative units for workers' compensation fraud for all carriers licensed in California. However, it does not appear that the code section applies to self-insured entities. The City's Disability Claims Task Force has discussed the idea of hiring an in-house investigator. In addition, the Police Department has proposed a one-year pilot claims investigation unit in the Police Department at an estimated cost of \$168,000. The cities of Los Angeles and San Francisco have such programs in their police departments. After San Francisco began in-house investigations of workers' compensation claims, police department usage of workers' compensation dropped by half.

In our opinion, the City should increase both the number and frequency of investigations. Accordingly, the City should fund a Police Department pilot claims investigation unit project on a one-year basis. At the end of the year, the City should assess whether the pilot program should be continued and/or expanded to other City departments. Whether the investigative and claims management functions can be closely coordinated with the Workers' Compensation adjusters should be one criteria used to assess the success of the pilot program.

### **Additional Resources Are Needed**

According to authoritative sources, money spent administering workers' compensation claims yields future savings in claims payout costs. In California, loss adjustment expenses (that is, the cost to adjust all claims to conclusion) typically account for an estimated 30 percent of all expenses. We estimate that the City spends approximately \$2.3 million (approximately 15 percent of annual expenses) per year on loss adjustment expenses. This includes:

<u>Expenses</u>	<u>Amounts</u>
Administration	\$1.7 million
Legal expenses	0.5 million
Investigations	<u>0.1 million</u>
<b>Total</b>	<u><b>\$2.3 million</b></u>

The number of positions assigned to the Workers' Compensation section increased from 14.25 FTE in 1989-90 to 21.25 FTE in 1990-91. There has not been any major addition to staffing since 1990-91. Workers' Compensation has, like many City departments, been cutting staff and "making do" for several years. In order to meet the demand for service, Workers' Compensation has reduced support positions and contracted out bill review in order to free up support staff time to handle medical-only claims. The budget for 1993-94 was \$1.8 million, or \$557 per open claim. The adopted 1994-95 budget is for \$2 million, or \$663 per open claim. The adopted budget includes the elimination of two support positions and the addition of two Workers' Compensation adjusters for a net total of 21.87 FTE positions including ten Workers' Compensation adjusters. However, even at ten Workers' Compensation adjusters, Workers' Compensation will still be short of the state-recommended case load of 200 indemnity claims per adjuster. At the present time, we estimate that Workers' Compensation would need up to 14 adjusters to meet that standard. It should be noted that this level of staffing may not be required if case-closing projects and claim reduction projects are successful.

An adequate level of support staff is also important to Workers' Compensation's ability to provide quality service. For example, in the past year, more data entry tasks and handling of most medical-only cases have been

transferred from adjusters to support staff so that adjusters can focus on the more complicated indemnity cases. As of March 30, 1994, two support staff were handling 145 of the 372 open medical-only claims. Additional support staff may be required to implement the recommendations in this report.

It should be noted that some jurisdictions have dedicated positions for subrogation recovery. San Jose deleted that position in 1993-94. At present, Workers' Compensation reviews claims for possible third-party action and refers all subrogation to the Treasury Division for recovery. The city of Sacramento handles its subrogation cases this same way. However, the city of San Diego has a recovery unit with two full-time people and recovered \$192,000 in 1992-93. The city of Long Beach has a paralegal who pursues subrogated claims.

**An Aggressive Cost Containment Program Should Be Initiated  
To Reduce The Number And Cost Of Workers' Compensation Claims**

Total costs of workers' compensation are staggering even though the City is not commonly considered a dangerous place to work. Proactive utilization review is an important component of a cost containment program. Common sense dictates that consultation should be required with a medical professional (1) before the City accepts responsibility for paying for surgeries or other costly procedures and (2) to monitor care in the more severe or complicated cases.

The Workers' Compensation Manager is anxious to expand basic utilization review services to cover chiropractic care, physical therapy, and medical groups. In addition, the 1994-95 Proposed Operating Budget included but did not recommend a proposal to hire a full-time City physician as *"an investment in managing workers' compensation medical treatment, generating potentially dramatic savings in skyrocketing medical and claims costs."* In our opinion, Risk



Management and the Human Resources Department should establish a working relationship between Workers' Compensation and Occupational Health Services to provide Workers' Compensation adjusters and claimants with access to additional medical expertise. In addition, Workers' Compensation should expand its utilization review process to include long-term medical management of severe and complicated cases.

Furthermore, Workers' Compensation should provide adjusters with training on the benefits of early intervention programs and on handling the underlying personnel and employment issues that often accompany Workers' Compensation claims.

It should be noted that Workers' Compensation has chosen not to implement certain recent changes in state law. Specifically, the City can direct employees to medical providers of the City's choice or to the City's Occupational Health Services for the first 30 days after a work-related illness or injury provided the employee has not pre-designated a personal physician. Current policy is to cooperate with employees by letting them go to their own physicians during the first 30 days, thereby fostering good relations with employees and, hopefully, saving the City money in the long run. Theoretically, an employee that was forced to see a City-chosen physician for the first 30 days could see his or her own physician on day 31, begin treatment all over again, and eventually cost the City more money.

It should also be noted that recent state legislation would allow employers to direct employees to preferred providers for 180 days or more (see the Other Pertinent Information section of this report). Program personnel are monitoring implementation of this new law but report that, thus far, no large employers have taken advantage of it.

## **CONCLUSION**

The state of California mandates what workers' compensation benefits the City must pay. Our review revealed that the City is not availing itself of all opportunities to contain those costs. As a result, the City's costs for workers' compensation are high. In our opinion, the City should allocate additional resources to claims management and expand upon its cost containment program in order to reduce workers' compensation costs.

## **RECOMMENDATIONS**

We recommend that Risk Management:

### **Recommendation #14:**

Request additional funding for (1) enough temporary or permanent Workers' Compensation adjusters to stabilize the average indemnity case load at approximately 200 per adjuster, (2) additional clerical staff to support the additional adjusters, and (3) overtime pay to support periodic case closure projects. (Priority 2)

**Recommendation #15:**

Provide departmental workers' compensation liaisons with (1) claims-handling training, (2) manuals which outline their responsibilities and employer/employee rights, and (3) monthly listings of employees in their departments with open claims, including claim status, type, and cost to date. (Priority 3)

**Recommendation #16:**

Expand medical utilization reviews to include (1) outpatient medical services including chiropractic care and physical therapy and (2) long-term medical management of severe and complicated workers' compensation cases. Occupational Health Services should either coordinate such reviews or participate in the procurement of such reviews with an outside contractor. (Priority 2)

**Recommendation #17:**

Provide Workers' Compensation adjusters with training on the benefits of early intervention programs and on handling the underlying personnel and employment issues that often accompany workers' compensation claims. (Priority 3)

**Recommendation #18:**

Encourage employees to get second medical opinions when physicians prescribe costly medical procedures and, when necessary, consult with the City Physician regarding the advisability of obtaining a second opinion. (Priority 3)

**Recommendation #19:**

Request additional funding to (1) conduct a targeted number of investigations in 1994-95 and (2) fund the Police Department's proposed claims investigation unit on a one-year pilot project basis. (Priority 3)

**Recommendation #20:**

Require Workers' Compensation adjusters to (1) review questionable claims with their supervisors and employees' supervisors, (2) respond to all requests for investigations, (3) notify supervisors and departmental workers' compensation liaisons of the status and results of those investigations, (4) notify supervisors and departmental workers' compensation liaisons when claims are denied, and, when appropriate, (5) forward copies of denied medical bills to employees so that they can submit them to their health insurance carriers for payment. (Priority 3)

**Recommendation #21:**

Reemphasize the need for Workers' Compensation to make initial contact with an employee within 48 hours after the employee files a claim and track performance against that goal. (Priority 3)

**Recommendation #22:**

Provide the Retirement unit with a monthly listing of workers' compensation claims payments made to Federated Retirement System retirees who are on service-connected disability retirement. (Priority 2)

**Recommendation #23:**

Update the Workers' Compensation Procedures Manual to include current practices and procedures, establish standardized database input codes, and revise practices and procedures to include standard medical disease and treatment codes. (Priority 3)

**Recommendation #24:**

Expand and establish qualitative objectives for the customer call-back program and monitor actual performance against those objectives. (Priority 3)

**Recommendation #25:**

Establish internal policies and recommended methods for discounting the probable present value of benefits for use in negotiating compromise and release settlements for those claims which are expected to be over \$20,000. (Priority 2)

**Recommendation #26:**

Require supervisory review of initial permanent disability advances to help ensure that advances are appropriate as to potential future awards. (Priority 2)

In addition, we recommend that the City Attorney:

**Recommendation #27:**

Provide the Workers' Compensation section with a written opinion regarding what workers' compensation records are confidential and what records are public. (Priority 3)

We also recommend that the Administration:

**Recommendation #28:**

Direct (1) departmental safety officers to interview each employee who files a workers' compensation claim for safety-related concerns and (2) the City's Safety Officer or his or her designee to interview each employee who files more than two claims in a year and follow up with the departmental workers' compensation liaison and Workers' Compensation adjuster. (Priority 3)

Furthermore, we recommend that Risk Management and the Human Resources Department:

**Recommendation #29:**

Establish a working relationship between Workers' Compensation and Occupational Health Services to provide Workers' Compensation adjusters and claimants with access to additional medical expertise. (Priority 2)

**Recommendations Requiring Budget Action**

Of the preceding recommendations, #14, #16, #17, #18, #19, and #28 may not be able to be implemented absent additional funding. Accordingly, the City Manager should request during 1994-95 that the City Council appropriate an amount sufficient to implement recommendations #14, #16, #17, #18, #19, and #28.

## **FINDING III**

### **THE CITY OF SAN JOSE NEEDS TO TAKE ADDITIONAL STEPS TO ADDRESS WORKPLACE SAFETY**

The state of California and the city of San Jose's (City) policies and employee agreements require the City to provide a safe work environment for its employees. In addition, authoritative sources have identified prevention as the number one cost control measure for workers' compensation. During the last few years the City Administration has taken several steps to address employee safety issues which apparently have had a positive effect on the number of workers' compensation claims filed and their costs. However, our review revealed that there are several additional steps the Administration needs to take to address workplace safety. Specifically, we identified that

- When compared to other California cities, San Jose's Safety Program is organizationally misplaced and not adequately emphasized;
- The City's Disability Claims Task Force, formed in 1992, has been only moderately successful;
- Only one City department has performance measures for employee safety; and
- The City has budgeted very little to prevent the kind of injuries that have cost the City at least \$29.3 million in the last two years.

In our opinion, the City's Safety Officer and risk management functions should be organizationally consolidated and report directly to the City Manager. In addition, the City Manager, the Safety Officer, and Risk Manager need to take steps to further address workplace safety issues.

**The State Of California And The City Of San Jose's  
Policies And Employee Agreements Require The City  
To Provide A Safe Work Environment**

The state of California, the City's own policies, and various memoranda of agreement between the City and unions require the City to provide a safe working environment.

**State Of California**

The state of California, Department of Industrial Relations, Self-Insurance Plans Division, has established standards a company must meet to qualify as a self-insurer of workers' compensation in California. One of these standards is that a company must have an effective safety and health/accident prevention program.

In addition, in 1993, the State Legislature passed workers' compensation legislation that requires all California employers to formally establish and maintain an illness and injury prevention program to

- Effectively utilize workers' compensation information to review and revise safety procedures;
- Focus on injury frequency and severity issues which can be controlled;
- Enforce and reinforce participation in preventative programs at all levels of the organization; and
- Understand the cost-benefit ratio of the illness and injury prevention program and publicize results internally.

Finally, additional legislation passed last year requires Cal-OSHA to adopt by January 1, 1995, an ergonomic standard to prevent cumulative trauma disorders (CTDs) such as carpal tunnel syndrome. A three-year phase-in of the standard is allowed, and a systematic approach to injury prevention will be required of all



industries. This should include (1) gathering preliminary information from the past three years, (2) work site evaluation, (3) control measures--modify work tasks and/or equipment, (4) medical management, and (5) training.

### **City Policies**

The Finance Administrative Manual includes a section on an employee safety program. The program outlines the policies and procedures to provide a safe and healthful workplace for employees.

Furthermore, the City's budget states,

*The City will promote the understanding that City employees are the most valuable resource. . . . The City will employ good management practices when planning for service delivery by including in budget requests money to pursue activities such as . . . employee safety. . . .*

Finally, all memoranda of agreement with City employees include sections on safety which state in part,

*The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations.*

### **Prevention Is The Number One Cost Control Measure**

Authoritative sources agree that the way to control workers' compensation costs is to prevent claims in the first place. Moreover, they concur that the best way to prevent claims and thus achieve immediate cost savings is to aggressively manage workplace safety. A personnel law publication enumerating the 12 best workers' compensation cost control ideas ranked establishing an effective safety program at the top of the list. Many companies have vastly reduced workers' compensation claims expenses through accident prevention measures that incorporate programs including safety training and awareness, equipment designed

to reduce strain, brief exercise, and managerial awareness of safety problems. In 1993, the state Department of Insurance reported that companies with good safety programs could lower injuries by 40 percent and cut their premiums by as much as half. The report stated that Mervyn's Department Stores saved \$500,000 in one year just by changing the way its employees lifted and carried.

According to the City Physician, monitoring employee health and safety is a valuable tool for claim prevention. Monitoring has two components: claims trending and employee surveying. A claims trending program cross tabulates the number of accidents and lost work days per employee for various job locations and descriptions. This type of analysis reveals patterns in types and causes of injuries and allows corrective action to be taken. The employee survey component of monitoring is equally important. All employees in a department are surveyed, not just those who have been injured and have filed claims. An effective survey includes questions regarding employees' job activities and current health status. The City Physician informed the auditors that in his work in the Communications Center he discovered many employees with symptoms of work-related ailments who had not filed claims. Surveying employees will reveal these complaints so that prevention through education can be initiated. The City Physician and the Water Pollution Control Plant safety officer plan to establish this type of complete monitoring program at the plant.

As stated in Finding II, the Workers' Compensation claims database does not contain standard medical and disease codes. Other workers' compensation practitioners commonly use these codes. Trending claims is not possible unless these codes are programmed into the Workers' Compensation claims database. Accordingly, we recommended in Finding II that these codes be programmed into the claims database.

Our review revealed that the City has always had and continues to have good intentions with regard to safety. Nevertheless, the number of reported claims increased 45 percent between 1985-86 and 1990-91. It should be noted that 1991-92 showed a 7 percent decrease from 1990-91 and 1992-93 declined another 4 percent compared to 1991-92. However, due to the nature of workers' compensation claims, the City usually incurs additional costs on claims filed in previous years that remain open. Therefore, even if the number of claims in any one year declines, costs on the aggregate of all years' claims in the system will increase.

**The City May Pay On Some Workers' Compensation Claims For Over 20 Years**

When accidents are not prevented and workers' compensation claims are filed, any number of those claims can remain open and "on the books" for over 20 years. For this reason, workers' compensation claims are often termed "long-tailed" claims. Table IX demonstrates the "long-tailed" phenomenon.

**TABLE IX**  
**INCREMENTAL AND REMAINING ESTIMATED COSTS**  
**OF WORKERS' COMPENSATION CLAIMS**  
**FILED JULY 1, 1988 THROUGH JUNE 30, 1993**

Claim Report Year	Payment Year (Payments in millions)					Total Paid As Of 6/30/93	Reserves As Of 6/30/93 (Estimated)
	1988-89 (Estimated)	1989-90 (Estimated)	1990-91 (Estimated)	1991-92	1992-93		
1988-89	\$1.3	\$1.8	\$1.1	\$1.6	\$0.8	\$6.6	\$2.6
1989-90		\$1.6	\$1.5	\$1.5	\$1.0	\$5.6	\$3.3
1990-91			\$2.3	\$3.3	\$2.1	\$7.7	\$6.2
1991-92				\$2.2	\$2.9	\$5.1	\$7.2
1992-93					\$2.5	\$2.5	\$8.9

Table IX shows once claims are filed the City continues to pay on them as long as they remain open. For example, claims filed in 1988-89 have cost the City \$6.6 million as of June 1993 and are expected to cost an additional \$2.6 million before they close. Likewise, the City paid \$2.9 million in 1992-93 for claims filed in 1991-92 and is expected to pay an additional \$7.2 million before these claims are closed. Our review revealed that some of these claims could have been prevented.

#### **Sample Of Claims**

In most jurisdictions, police and fire departments file the majority of workers' compensation claims. This holds true for San Jose, too. However, many public safety injuries are not sustained in the heat of battle. State workers' compensation records show that while some injuries result from chasing criminals and fighting fires, others involve incidents such as turning around in a squad car or stepping off a truck incorrectly. Our review of a sample of claims provided evidence of several of these types of injuries.

We statistically sampled all claims filed from January 1, 1990, through December 31, 1992, and found examples of injuries that could have been prevented. For example, (1) an employee with a previous and serious back condition reinjured his back when pulling a trailer across a parking lot, (2) an employee received an eye injury because he did not wear safety goggles, and (3) several injuries were sustained during training exercises because of improper equipment usage or technique. In our opinion, these are the types of injuries and subsequent workers' compensation costs that can be prevented if the City gives safety a higher priority and employees are made more aware of safety issues.

According to a workers' compensation database report, during 1990-91, 1991-92, and 1992-93 the City averaged approximately 1,700 reported workers' compensation claims and incurred costs of about \$13.4 million per year. Therefore, if the City could reduce workers' compensation costs by just 10 percent, it could save about \$1.3 million. As was previously stated, the number of reported claims has declined in the last two years. The City Administration recently implemented some safety programs that may already have had a beneficial effect on the number of workers' compensation claims filed and their costs.

#### **City Administration Has Recently Made Efforts That Have Had Positive Results**

##### **Safety Program**

The Administration has initiated a new Safety Program. According to the City's Safety Officer,

- A Citywide safety program booklet has been developed;
- The Safety Officer heads a Citywide Safety Committee and meets monthly with departmental safety officers;

- A training program has been developed for departmental safety officers;
- Safety officers have been chosen for all large departments, and they conduct monthly meetings;
- The Police Safety Committee meets twice a month, since the Police Department has over 400 accidents per year;
- Departments have written illness and injury prevention manuals;
- The Police Department is tracking injuries and claims filed by rank;
- The Police and Fire Departments review accidents at four levels: captain, battalion chief, deputy chief, and chief;
- Training for Police, Fire, and other large departments in workers' compensation requirements has been completed;
- A checklist for injury and illness prevention based on Cal-OSHA standards has been developed;
- An ergonomics training program concentrating on carpal tunnel syndrome has been given to 200 City employees as of April 1994;
- A back care/lifting program has been implemented; and
- A Safety Recognition Program has been approved to reward departments with the best or most improved safety records.

The City's Safety Officer plans to apply a total quality management (TQM) approach to the Safety Program. He feels the continuous improvement concept of TQM is very appropriate in the area of safety. He is tracking individual lost time claims, the total number of employees with lost time claims, and average expenses for those claims and is sharing this information with departments at their monthly departmental safety committee meetings. In our opinion, discussing safety issues related to specific claims at these meetings would further enhance the planned application of TQM to the Safety Program. Therefore, we recommend including

an accident review component in the monthly departmental safety committee meetings to discuss safety concerns related to workers' compensation claims filed since the previous meeting.

### **Disability Claims Task Force**

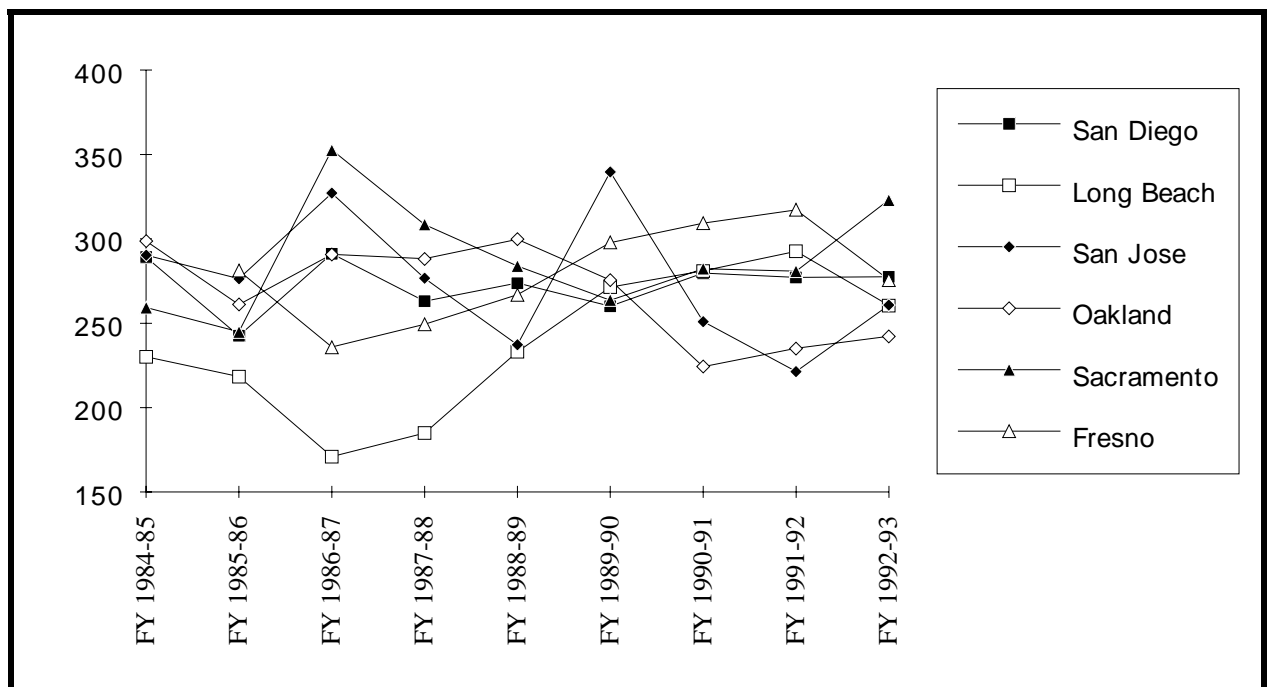
In 1992, at the direction of the City Manager, a Disability Claims Task Force (Task Force) was formed and first met in August of that year. At its monthly meetings, the Task Force addresses safety issues. The Risk Management, Employee Relations, City Attorney, Finance, Human Resources, Police, and Streets and Parks Departments usually send representatives to Task Force meetings. However, attendance has been sporadic. Furthermore, the Fire Department, with the second highest number of claims in the City, is not currently included on the Task Force. According to the Risk Manager, he intentionally left the Fire Department off the Task Force because its inclusion would be too burdensome for the Task Force during its formative period. Regarding safety, the Task Force proposed the following:

- Establish a pilot program for safety in three departments
- Distribute quarterly reports to department managers to track illnesses and injuries
- Develop a supplemental questionnaire that requires department managers to complete on every claim details of how the injury occurred and how or if it could have been prevented
- Obtain approval to use money from the Workers' Compensation Fund to reward departments with good safety records

### **Loss Experience**

San Jose's workers' compensation experience compares favorably with other jurisdictions. For example, in 1991-92, San Jose had the lowest number of claims per thousand employees of the six California cities we surveyed. The number of claims per thousand employees climbed slightly in 1992-93; however, San Jose was still among the lowest. Graph II shows the number of claims filed per thousand employees.

**GRAPH II**  
**NUMBER OF CLAIMS FILED BY FISCAL YEAR**  
**PER THOUSAND EMPLOYEES**



The City's Safety Officer speculates that the Safety Program and increased safety awareness may be influencing factors in the reduced number of accidents. In addition, increased departmental awareness about their workers' compensation claims (particularly in Police and Fire), recent publicity about workers'



compensation fraud cases, and the formation of the Task Force are certainly other influencing factors.

### **The City's Safety Program Is Organizationally Misplaced**

From 1981 to 1992, the City's Safety Program was under the Finance Department with the City's Safety Officer physically located in the Risk Manager's Office and reporting directly to the Risk Manager. In addition, the Safety Officer was in close contact with Workers' Compensation adjusters, reviewed claims for causes of accidents, and visited departments to inspect accident sites and to interview injured employees. It should be noted that a clerical position provided support for the Safety Officer.

In January 1992, a different individual was placed in the safety officer position, transferring from a Human Resources position. Due to budget considerations, funding for the position is .75 percent from Finance/Workers' Compensation with the remaining .25 percent from Human Resources. While the Safety Program is still under Finance, the Safety Officer is now physically located in the Human Resources Department and has minimal support. Thus, a direct reporting relationship between the Safety Officer and the Risk Manager no longer exists. Also, there now is no contact between the Safety Officer and the Workers' Compensation adjusters. Although the Safety Officer receives and reviews claims related to vehicular accidents, other types of claims are neither reviewed nor discussed with Workers' Compensation adjusters. In our opinion, the Safety Officer's minimal level of support staff and lack of proximity to the Risk Manager and the Workers' Compensation adjusters inhibits the exchange of information necessary to conduct an effective safety program.

### **Reporting Structure Of The Safety Officer In Other California Jurisdictions**

We surveyed four other large jurisdictions in California--namely, Sacramento, Oakland, San Diego, and Long Beach--to determine the reporting structure and physical location of their citywide safety officers. Our review revealed that safety officers in all four cities report directly to the risk managers and are physically located in the risk management offices. Risk Management is under Finance in Sacramento, is a separate department in the cities of Oakland and San Diego, and is under the Department of Human Resources in the city of Long Beach. San Diego's safety officer was located in Human Resources but moved to the Risk Management Department in 1993. It should be noted that the Government Risk Management Manual recommends that risk managers be directly involved in safety and loss programs and that safety officers be directly responsible to risk managers.

### **1986 Study Of Risk Management**

A 1986 study of the City's Risk Management administration recommended that the City consolidate all risk management-related functions in order to more effectively manage its interrelated components. According to the study,

*It is common for organizations of the size and complexity of the City to consolidate certain risk-related functions into one department. The functions which are commonly consolidated into a Risk Management Office include:*

- *identification and quantification of risks*
- *development of loss control programs, including . . . employee safety*

*If the risk management function is consolidated, it should report to the City Manager's Office. Such a reporting relationship will give added recognition to the function and will allow it to cross departmental lines as needed.*

The City accepted and implemented the recommendation to consolidate all risk management functions, except general liability, in order to more efficiently manage its interrelated components but did not choose to implement the recommendation that the Risk Manager should report directly to the City Manager. In our opinion, this has resulted in low visibility for the Workers' Compensation Program. As a result, top City Administration officials have not been fully apprised of the increasing number of claims and their costs and policies have not been followed. Finally, as discussed throughout this report, there is an interrelationship of the occupational health services function and the risk management and safety program functions. Accordingly, we recommend the risk management, safety program, and occupational health services functions be consolidated and report directly to the City Manager.

### **The City's Safety Program Is Not Adequately Emphasized**

#### **Accountability For Safety**

In order for a safety program to work, every manager, supervisor, and employee must meet certain responsibilities. The responsibility for safety belongs to everyone. Accordingly, accountability rests with the City Manager, the Safety Officer, department directors, managers and supervisors, and each City employee. Part of the Safety Program's statement of purpose says,

- *Supervisors are responsible for developing proper attitudes toward safety and health in themselves and in those they supervise, and for ensuring that all operations are performed with the utmost regard for the safety and health of all personnel involved, including themselves;*
- *Employees are responsible for whole-hearted, genuine operation of all aspects of the safety and health program--including compliance with all rules and regulations--and for continuously practicing safety while performing their duties.*

While this statement of purpose outlines responsibilities regarding the Safety Program in the City, there is no mechanism whereby managers and employees can be held accountable for safety. Our review revealed that other jurisdictions hold managers accountable for workplace safety through performance evaluations.

An April 1993 article in Business Insurance documented how the state of Oregon's risk manager reduced the state's workers' compensation costs. He accomplished the reduction by implementing a program that puts the responsibilities for workers' injuries upon the managers of individual departments. Management of workers' compensation is made a part of the managers' evaluations, and the departments must pay their share of the workers' compensation premium according to their loss profile. The risk manager's marketing of the program to the department managers was part of its success.

In the city of Long Beach, department heads and managers are held accountable to meet an established target for the number of workers' compensation claims filed in their departments. The risk manager reports quarterly to the city manager on the number of each department's claims. When that system was implemented, the city manager agreed to include meeting the workers' compensation targets in managers' annual performance evaluations. Each year, the risk manager gives the city manager a report on each department's workers' compensation performance. The city manager signs a letter that is attached to each report to the department head. This way, each department head knows that the city manager has been informed of his or her performance. This type of attention has had a positive affect and has provided constant reinforcement to maintain good performance or improve bad performance. In March 1994, San Jose's City Manager began sending memoranda regarding mid-year Workers' Compensation reports to department heads.

Including safety performance in managers' evaluations has had a positive effect on both lost time from work and the amount of disability leave pay. For example, in 1991-92, the Long Beach Police Department had 45,000 lost work hours and paid \$1,265,000 in disability leave pay for non-productive time. In 1992-93, the department showed great improvement. It reduced lost work hours by 16,000 hours (36 percent) and reduced disability leave pay by \$493,000 (39 percent). It should be noted that the evaluation system has worked in concert with other efforts in the city, such as the safety program, to achieve these results. In our opinion, the performance of our department heads and managers should be evaluated in a similar manner to hold them accountable for providing a safe working environment. Accordingly, we recommend the City Manager require that annual evaluations of department heads and managers include a safety performance component.

***Quarterly Reports Provide Valuable Information  
For Accident Prevention And Cost Control***

Authoritative sources state that accident prevention controls costs and that introducing programs to promote safety in the workplace is the key to preventing accidents. Moreover, part of a good safety program should be management's study of the causes of accidents and ways to prevent them. Quarterly loss reports can be a valuable source of information for such a study.

The city of Long Beach prepares and distributes a Safety Performance Report to departments and the city manager on a quarterly basis. Departments have benchmarks for safety performance based on previous quarters' performance and industry standards. Ratings are "Green, Yellow, Red" according to the number of indemnity claims filed. "Red" denotes performance critical; "yellow" denotes

performance poor but not critical; "green" denotes performance excellent, deserves recognition. The risk manager prepares letters to each department head on the city manager's behalf and attaches them to the city manager's copy of the report for signature. This practice ensures that department managers are aware that the city manager has reviewed their performance for the quarter. "Red" departments are called into a meeting with the risk manager, workers' compensation representative, and safety officer to discuss their performance. "Green" departments' good performance is recognized and rewarded. In addition, peer pressure can be an influence because everyone knows whose department is a "red" or a "green."

The Task Force had originally proposed that Workers' Compensation management reports for tracking injuries and illnesses be distributed to department managers on a quarterly basis. However, a decision was made to provide the reports on a semi-annual basis. During the audit, it also came to our attention that these reports are distributed to department heads but not necessarily to supervisors, managers, or departmental workers' compensation liaisons. In our opinion, semi-annual distribution of these reports is too infrequent to adequately monitor claims trends, address causes of injuries, and/or correct safety problems. In addition, department heads should ensure that these reports are distributed to supervisors, managers, and workers' compensation liaisons for most effective use within their departments. Therefore, we recommend quarterly distribution of Workers' Compensation management reports to these individuals.

**Department Managers Are Unaware Of The Total Cost Of Accidents**

Once department managers fill out and sign the appropriate forms and send them to Workers' Compensation, they usually are unaware of the total cost of the

reported accident. This can be significant when apparently minor accidents can end up costing thousands of dollars as the following case illustrates.

WORKERS' COMPENSATION CASE #8

May 1991 - Employee stepped up on back of truck and bumped his head on a ladder, resulting in scraped scalp and neck pain.

According to the claim form, the ladder was improperly stored in a rack on the truck. No time was lost from work at the time of the accident. The employee apparently continued to experience neck pain for three months and sought treatment with a chiropractor in August. By October 1991, the Workers' Compensation adjuster had reserved \$5,100 for chiropractic treatment and medication. In June of 1992 (eight months later), the employee received a permanent disability rating of 11.75% on the injured neck with an award of approximately \$5,200 to be paid out at \$140/week for 37.25 weeks. The Workers' Compensation adjuster then added another \$6,600 to the ultimate expected cost of the claim.

Total reserves against claim at June 1992: \$11,800

Workers' Compensation adjusters' experience should be used to help prevent future incidents, thus reducing the number of claims and costs. The adjusters receive many claims with comparable injuries sustained as a result of similar workplace practices or situations. As a result, they have extensive knowledge about how and why accidents occur in the City. In our opinion, Workers' Compensation adjusters should follow up on safety issues regarding injuries that could have been prevented. Accordingly, we recommend that Workers' Compensation adjusters contact departmental safety officers to inform them of emerging safety-related issues arising from their review of claims. In addition, a closure memorandum from the adjuster to the department manager could inform

them of any safety issues related to the claim and would let the manager know, as in the above example, the true cost of not stowing a ladder properly in the rack on the maintenance truck. Therefore, we recommend that a closure memorandum be developed and distributed to department managers when a claim is closed.

Our survey of other large jurisdictions in California revealed that their citywide safety officers are in close contact with their workers' compensation adjusters and departmental safety officers. Furthermore, each safety officer either leads or is a member of an accident or claim review committee, along with representatives from risk management, workers' compensation, and medical services. Such committees have had a positive effect on both the number of claims filed and identifying and correcting safety problems. It should be noted that the safety officers in other jurisdictions have at least one support staff person to assist them. All concur that their ability to review individual claims and chair committees would be impossible without clerical support. We recommend that the City's Safety Officer meet with Workers' Compensation adjusters and departmental workers' compensation liaisons, and with the City Physician as appropriate, to review claims and identify causes of accidents. In addition, we recommend providing additional support staff for the City's Safety Officer to support all Citywide safety programs.

### **The Safety Audit**

An effective way to ensure accountability for safety is through a safety audit. A successful safety audit program (1) uses a multidisciplinary team of experts, (2) acquires the support of management in setting performance measures, (3) provides timely feedback to the organizational units, and (4) evaluates the economy, efficiency, and effectiveness of the organization's



safety program. Implementing safety audit programs has produced outstanding safety results for private corporations.

The Midas International Corporation has recognized significant gains in its safety record since it initiated a safety audit program. Its program includes evaluations of safety training, workers' compensation, communication, documentation of safety records, industrial health and cleanliness, and safety administration and accountability. In 1978, Midas had one injury per 4,000 employee hours. In 1987, Midas had reduced that to one injury per 27,000 employee hours. Reporting played a significant role in Midas's success. Safety statistics, developed and ranked, go to all managers who report such statistics. Peer pressure and competitiveness focuses management's attention on poor safety records. Positive reinforcement is given in the form of awards to those managers with outstanding safety records. Furthermore, dollar values assigned to safety mishaps permit management to assess the impact of poor safety on the organization's profitability. The corporate environment was improved by (1) institutionalizing the safety audit function, (2) relying upon management's participation, (3) assigning realistic safety performance measures, (4) using relevant reporting mechanisms, and (5) "fairly" assessing the safety process.

According to the City's Safety Officer, a program for departmental safety officers to audit each other's safety programs has been implemented and some of these audits have already been performed. The safety audit program uses the measurement components of the Meritorious Safety Award. Criteria include:

- Leadership--top leadership, management for safety;
- Information and analysis--program measurement, comparison, and benchmarks;

- Strategic continuous improvement planning--injury and illness prevention plan, safety goals and plans;
- Staff development and management--safety inspections, training program, communication program, employee recognition, wellness program;
- Management of the departmental safety program--safety organization and safety committee, safety programs, process management (TQM); and
- Quality and safety improvement--safety results, operational results, employee focus and satisfaction.

In our opinion, this program contains the essential elements of an effective safety audit. Accordingly, we recommend that the safety audit process be formalized to ensure that departmental safety officers periodically audit each other's safety programs.

### **The City's Disability Claims Task Force Has Been Only Moderately Successful**

The Task Force was formed in 1992. We reviewed the minutes of its meetings from August 1992 through March 1994. During that time, several programs have been implemented. These programs include:

- The Citywide Safety Program
- The limited pilot program in the Police, Streets and Parks, and Finance Departments
- The installation of voice mail in Workers' Compensation for 24-hour claim reporting
- The preferred provider network

However, our review revealed that many of the Task Force's original proposals have yet to be implemented. It should be noted that several of these proposals hinged on securing City Attorney opinions that were requested in 1993.

Specifically, the Task Force requested opinions on meet and confer issues and release of medical and surveillance information to departments. However, other Task Force proposals that do not depend on legal opinions are still not implemented.

In October 1992, the Task Force decided to develop a supplemental questionnaire that supervisors would have to fill out describing

- How and why an accident occurred;
- Did it have to occur; and
- If problems contributing to the accident have been corrected.

The questionnaire format was outlined in November 1992, but a final revision was not scheduled to be completed until April of this year. Furthermore, our review

revealed that the Task Force held no meetings from October 1993 until March 1994. It should be noted that this apparently was a planned hiatus due to some circumstances over which the Task Force had no control. According to the September 1993 meeting minutes, the Task Force was still waiting for opinions from the City Attorney on several issues and felt it could not move forward until these opinions were received.

#### **Only One City Department Has Performance Measures For Employee Safety**

We reviewed the 1993-94 Adopted Operating Budget and found that only one City department--Streets and Parks--has safety-related performance measures in its budget. Its Management and Administration Support Program has a performance measurement targeting the number of employees in attendance at technical and safety training sessions. It should be noted that this measure was changed in the 1994-95 Proposed Operating Budget. The department now measures its performance by attendance hours at safety and technical sessions rather than by the number of employees attending. While safety training is very important, it is only one measure of departmental commitment to safety in a comprehensive safety program. In our opinion, City departments, especially those with substantial numbers of claims in the system, should adopt performance measures that target a reduction in the number of claims filed.

#### **The City Of Long Beach Has Established Performance Targets For Safety**

The city of Long Beach has established safety performance targets to reduce the number of workers' compensation claims. In 1989, the city obtained industry averages of accidents by occupation from the state and compared departments to those standards. The goal for each department is to meet or be below the industry

average number of accidents by occupation. The city acquires updated information each year, and the risk manager sets targets annually. Targets for departments who are doing well are determined by the previous year's performance. For example, a department below industry average in the number of accidents would be targeted to continue that performance. On the other hand, if a department is performing poorly, it is not expected to match or beat the industry standard immediately. Instead, its target is set at either 80 percent of last year's actual (a 20 percent reduction in the number of accidents) or at 125 percent of the industry average, whichever is less.

The safety performance measures in place in the city of Long Beach have led to safer work habits and helped reduce the number of accidents. Departments are evaluated annually against their previous year's performance, and the results are reported to the city manager. In our opinion, San Jose would benefit by implementing a similar system to measure performance regarding safety. For example, the newly formed Human Resources Organization Development Team has set the following performance measures in its workplan:

- Reduce average number of days an employee is not on the job
- Reduce Citywide leave usage due to injury on the job
- Reduce percentage of employees retired due to injury on the job

Therefore, we recommend that the City Manager direct departments with high numbers of workers' compensation claims to establish safety performance measures and targets and track performance against those targets.

**The City Has Budgeted Very Little To Prevent The Kind Of Injuries That Have Cost The City At Least \$29.3 Million In The Last Two Years**

Although the City's number of reported workers' compensation claims has declined over the past two years, workers' compensation still costs the City tremendous amounts of money. We determined that the City spent at least \$29.3 million dollars in 1992-93 and 1993-94 on workers' compensation claims. Moreover, this does not include replacement staffing costs (overtime, comp time, and/or temporary help) that were incurred to cover the \$5.8 million in staff time lost to disability leave in 1992-93 and 1993-94. Conversely, our review revealed that the City has budgeted very little to prevent workers' compensation claims and their accompanying high costs. It should be noted that on May 25, 1994, the Finance Committee approved \$200,000 for a Citywide illness and injury program and agreed to amend the City of San Jose Municipal Code to permit the Workers' Compensation Fund to pay for certain program expenses.

**Ergonomic Disorders Are The Most Rapidly Growing Category Of Work-Related Illness**

The Bureau of Labor Statistics has identified ergonomic disorders as the most rapidly growing category of work-related illness/injury. In 1992, it accounted for 56 percent of illnesses/injuries reported to OSHA. That compares with only 18 percent in 1981 and 28 percent in 1984. One severe case of carpal tunnel syndrome can cost \$100,000 in medical and administrative expenses and lost productivity. Accordingly, funding for ergonomic programs can really pay off.

Blue Cross of California spent an average of \$20,000 each on 30 carpal tunnel syndrome claims in 1990. As a result, Blue Cross established a safety program that trained managers on how to recognize carpal tunnel syndrome symptoms and how to encourage injured employees to come forward quickly.

Although program costs were high, the training and equipment paid for itself. Within one year, Blue Cross received a \$1 million dividend from its insurance company because of reduced workers' compensation expenses. More claims were filed after the program was in place, but because problems were identified before they became critical the average cost per claim fell from \$20,000 to \$3,000.

**Back Injuries Reported From 1990 to 1992 Cost The City Over \$4 Million**

In March 1993, the City's Safety Officer reported that the City had paid \$10.7 million for injuries reported from July 1990 through May 1992. Further, the Safety Officer reported that of that amount, \$4.3 million, or 40 percent, was paid on back injury claims. In addition, 534 of the 1,647 injuries reported in that period (32 percent) were injuries to the lower back. The average cost to the City for a back injury was approximately \$8,000. Our review revealed that a relatively small monetary investment in ergonomic equipment could substantially reduce the City's cost for back injuries.

In 1987, the city of Coral Gables, Florida, purchased back belts for its refuse handlers. Each belt cost less than \$30. In the first year, average back ailment costs were cut from \$50,000 to \$800 and lost work from backaches was basically eliminated. If San Jose could reduce the severity of just one back injury claim equal to what the city of Coral Gables saved on average, it could pay for 1,600 back belts.

### *Safety Program Budget*

Currently, the City has one Safety Officer whose yearly salary is \$56,700. In 1993-94, the Administration proposed and the City Council approved \$7,000 for a Safety Recognition Program. The proposed use of these funds is to produce employee newsletters, provide access to various health and safety publications and organizations, purchase video training films, and provide safety awards. Until the recent approval of \$200,000 for a Citywide illness and injury program, this \$64,000 was the City's only safety program funding. Workers' Compensation costs in 1993-94 were at least \$14.5 million. Therefore, the City's 1993-94 safety budget was only .004 percent of the City's estimated workers' compensation costs. The 1994-95 Proposed Operating Budget includes a \$4,000 increase for the Safety Recognition Program. The \$200,000 budget addition for a Citywide illness and injury program still increases the 1994-95 safety budget to only 1.8 percent of the City's workers' compensation costs for 1993-94.

We surveyed other jurisdictions concerning their safety budgets. In 1993-94, the city of San Diego had a safety budget of \$439,000 with ten personnel coordinating individual departments, conducting safety training, reviewing and analyzing causes of accidents, and working with the departments to develop accident prevention plans. San Diego's workers' compensation claims payments were \$10.3 million in 1992-93 with 4 percent spent on safety as a percentage of total workers' compensation claims payments. The city of Oakland normally spends about \$12,000 for safety training, consultants, and safety awards, and each city department has a small budget for safety-related items. In 1989, the Sacramento City Council approved \$157,500 to fund a back program for three years at \$52,500 a year.



It should be noted that in addition to the Citywide Safety Program, individual departments have requested funding for safety-related items. We reviewed the adopted operating budgets for 1991-92, 1992-93, and 1993-94. The Fire Department was the only department to request and receive such funding during these years. In 1991-92, the Fire Department received a one-time budget addition of \$17,000 for testing and repairing aerial ladders to meet national safety standards. In 1992-93, the Fire Department received \$7,000 for hazardous materials suits, plus \$16,000 for safety supplies of latex gloves and \$6,250 for turnout boots, for a total of \$29,250. Finally, in 1993-94, the Fire Department received \$7,200 for back support belts to prevent and reduce back injuries. Furthermore, our review of the 1994-95 Proposed Operating Budget again showed that the Fire Department, as well as Human Resources, requested funding for safety-related items. The Fire Department budgeted \$16,811 for OSHA-mandated filtration masks to prevent exposure to tuberculosis. Human Resources requested a one-time increase of \$6,500 for additional hepatitis B serum. However, we found no evidence that other departments with significant numbers of injuries and claims are requesting items needed to promote safety.

Our review also revealed that Safety Program efforts to coordinate department needs for safety-related training or equipment could be improved. The City's Safety Officer coordinates portions of the Safety Program for departments. However, he informed us that some departments have contracted on their own with consultants to provide other programs they felt were needed. In 1993, the City Manager had indicated that he would be inclined to approve "seed money" to reward departments for their safety efforts and improvements provided it came from the Workers' Compensation Fund. Departments could use such "seed money" on safety training, equipment, consultants, or to set up or add to a weight

room. Approval for this use of the Fund has now been granted. In our opinion, the Safety Officer should coordinate departmental needs for safety-related items through the Safety Program. These items could either be requested as additions to departmental budgets or expensed to the Workers' Compensation Fund as appropriate. We recommend that the City Manager direct those departments with a high number of workers' compensation claims to coordinate their needs for safety-related items with the City's Safety Officer and to prepare budget proposals for such items.

## **CONCLUSION**

Our review revealed that the city of San Jose is required to provide a safe work environment for its employees and that prevention is the number one cost control measure for workers' compensation. Furthermore, although the City has recently implemented some programs to address employee safety issues, we found that there are several additional steps the City needs to take. Accordingly, the City should stress the importance of workplace safety in controlling workers' compensation costs by consolidating the risk management, safety program, and occupational health services functions and having them report directly to the City Manager. In addition, departments should budget for safety-related items and performance should be measured and evaluated against established safety targets.

## **RECOMMENDATIONS**

We recommend that the City Manager:

### **Recommendation #30:**

Consolidate the risk management, safety program, and occupational health services functions and have them report directly to the City Manager. (Priority 3)

### **Recommendation #31:**

Provide additional support staff for the City's Safety Officer to support all Citywide safety programs. (Priority 3)

### **Recommendation #32:**

Direct those departments with a high number of workers' compensation claims to establish safety performance measures and targets and track performance against those targets. (Priority 3)

### **Recommendation #33:**

Require that annual evaluations of the department heads and managers in those departments with a high number of workers' compensation claims include a safety performance component. (Priority 3)

**Recommendation #34:**

Direct those departments with a high number of workers' compensation claims to coordinate their needs for safety-related items with the City's Safety Officer and prepare budget proposals for such items. (Priority 3)

We also recommend that the City's Safety Officer:

**Recommendation #35:**

Measure program results against established Safety Program targets.  
(Priority 3)

**Recommendation #36:**

Work directly with Workers' Compensation adjusters and departmental workers' compensation liaisons, and with the City Physician as appropriate, to review claims and identify causes of accidents. (Priority 3)

**Recommendation #37:**

Include an accident review component in the monthly departmental safety committee meetings to discuss emerging safety concerns related to workers' compensation claims filed since the previous meeting. (Priority 3)

**Recommendation #38:**

Formalize the safety audit process to ensure that departmental safety officers periodically audit each other's safety programs. (Priority 3)

Finally, we recommend that the Risk Manager:

**Recommendation #39:**

Provide departments and departmental workers' compensation liaisons with quarterly reports on employee injuries and illnesses. (Priority 3)

**Recommendation #40:**

Direct Workers' Compensation adjusters to immediately inform departmental safety officers of emerging safety-related issues arising from their reviews of claims. (Priority 3)

**Recommendation #41:**

Develop a closure memorandum and instruct Workers' Compensation adjusters to prepare and send such memoranda to department managers summarizing any possible safety issues and informing them of the total cost of a claim. (Priority 3)

**Recommendations Requiring Budget Action**

Of the preceding recommendations, #31, #34, and #36 may not be able to be implemented absent additional funding. Accordingly, the City Manager should request during 1994-95 that the City Council appropriate an amount sufficient to implement recommendations #31, #34, and #36.

## **OTHER PERTINENT INFORMATION**

### **THE EFFECTS OF NEW STATE LEGISLATION**

#### **Legislative Reform**

In 1993, the California State Legislature amended some sections of the state's workers' compensation laws. The primary areas of the workers' compensation law that legislative reform addressed were:

- Psychiatric/Stress Claims
- Post-Termination Claims
- Prohibition of Referrals
- Vocational Rehabilitation
- Medical Fee Schedule
- Medical-Legal Fee Schedule
- Managed Care
- Benefits Increases

Appendix G summarizes legislative reform in 1993.

In addition, the City may be required to begin implementation of a new Cal-OSHA standard for ergonomics in the workplace by January 1, 1995.

#### **Risk Management Memorandum**

Risk Management prepared a preliminary memorandum addressing the reform's financial effect and impact on bargaining unit negotiations. The following sections highlight Risk Management's memorandum pertaining to each of the above areas. In some cases, we have added comments as appropriate.

### **Psychiatric/Stress Claims**

The new law requires that a worker show that employment conditions were the "predominant cause" of stress leading to psychiatric injury. Only 5 percent or less of the City's claims are stress claims, and nearly all employees obtain a medical-legal report stating employment conditions were the "predominant cause." This change should have no effect on bargaining unit negotiations.

### **Post-Termination Claims**

This change should have no significant effect on bargaining unit negotiations or expenses.

### **Prohibition Of Referrals**

Physicians, insurers, and vocational rehabilitation counselors are prohibited from referring injured workers to facilities in which they have a financial interest. According to the City's Workers' Compensation attorneys, although savings are difficult to measure, this should not significantly reduce costs.

A 1992 study published in The New England Journal of Medicine contended that self-referral may increase the inappropriate use of certain types of health services and increase the cost of medical care. Self-referral is the physician practice of referring patients to health care facilities in which they have a financial interest. According to the study, under California's Workers' Compensation Program, physicians with a financial interest in health care facilities refer significantly more patients for physical therapy, psychiatric evaluation, and magnetic resonance imaging than those physicians who do not own the facility.

### **Vocational Rehabilitation**

The injured worker is limited to one vocational rehabilitation plan with a cap of \$16,000 unless the injury warrants a second plan. Risk Management surveyed claims from 1991-92 and 1992-93 and estimated annual savings of approximately \$100,000 to \$125,000 on vocational rehabilitation claims.

### **Medical Fee Schedule**

The State Legislature revised the fee schedule to clarify, increase, and decrease payments for various procedures. Risk Management plans to do a study of the savings through its medical review organization.

*An October 1992 publication states, "A study released by the California Workers' Compensation Institute, San Francisco, CA indicates that the cost of workers' compensation is not reduced by cutting doctors' fees. The report revealed that payments to doctors increased by \$310 million to \$1.55 billion in 1991, a 25% increase, despite no changes in the unit price of doctors' services. Doctors can get around spending caps by charging for medical procedures that are not yet regulated by fee schedules. The report indicates that WC costs can only be reduced by controlling both doctors' fees and medical care utilization."*

### **Medical-Legal Fee Schedule**

California is the most expensive state in which to evaluate an injured worker. Physicians who write medical-legal evaluations currently can be paid three to four times more per hour than physicians who actually treat injured workers. Current legislation includes a built-in escalator clause for fees. On April 13, 1993, Governor Wilson signed SB 31 into law. SB 31 is narrow in scope but is the first significant workers' compensation reform bill to clear the Legislature this



year. State officials said the law will save at least \$100 million a year for employers and insurance firms and will cut the fee for most medical examinations in half. SB 31 requires a new fee schedule to be written for medical-legal examinations and accompanying reports for workers' compensation. In addition, the law will ensure that the workers' compensation system can deny payment for worthless evaluation reports.

An article in American Medical News documented a study on the costs in California for medical-legal examinations. According to a report by the Workers' Compensation Research Institute, a back injury costs five to ten times as much in California as in other states: Physicians and medical corporations in California received an average of \$502 an hour for medical-legal examinations of workers in back injury cases. The executive director of the American College of Legal Medicine recommends that neutral experts be hired to evaluate claims.

The new SB 31-required fee schedule is applicable to medical-legal evaluation reports where the examination occurs on or after August 3, 1993. It establishes two levels for initial medical-legal evaluations. The presumptively reasonable fee established for a "basic medical-legal evaluation" will be \$500, while the fee for a "complex medical-legal evaluation" will be \$750. The presumptively reasonable fee for supplemental and follow-up evaluations will be \$250. Where there are extraordinary circumstances relating to the medical condition being evaluated, physicians can be paid \$200 per hour.

The fee schedule contemplated in SB 31 presumes that the vast majority of medical-legal evaluations will be at the \$500 level--about half the level presumed reasonable under the previous statutory schedule. To be paid at the \$750 level, a physician will have to show that three or more of the following complexity factors

were required for the evaluation: (1) addressing the issue of medical causation, (2) addressing the issue of apportionment, and (3) the physician spending two or more hours reviewing records, two or more hours with the patient, and two or more hours doing medical research.

To be compensated for an evaluation at \$200 per hour, the physician must explain the circumstances which justify the extraordinary amount of time required for the evaluation. In addition, the physician must verify, under penalty of perjury, the amount of time spent on the various facets of the evaluation.

According to the Risk Management memorandum, the 1993 reform will not result in significant cost savings for the City, nor will it impact bargaining unit negotiations to a great degree. However, we performed an analysis and reached a different conclusion regarding potential cost savings in this area.

In 1992-93, Workers' Compensation medical-legal payments were approximately \$557,000. The majority of these dollars were paid to physicians for evaluations and reports. New legislation establishes a medical-legal fee schedule for reports at \$500 for a basic report and \$750 for a more complex report. According to Workers' Compensation adjusters, reports usually cost around \$1,000. The City may pay 25 percent to 50 percent less for these kinds of services as a result of the new legislation. Therefore, we estimate the City could save from \$139,000 to \$279,000. In addition, legislation already may be affecting these types of payments. Based on Workers' Compensation's payments during the first eight months of 1993-94, we estimate that the City may pay 35 percent less in medical-legal expenses than the \$557,000 it paid in 1992-93.

In addition, we reviewed a sample of claims filed from January 1, 1990, through December 31, 1992. Medical-legal expenses were \$6,300 for three claims

in our sample. In addition, one of the claims in the sample had three medical-legal charges totaling \$3,950. If the new law allows us to reduce medical-legal expenses by 25 percent to 50 percent "across the board" then medical-legal expenses, such as the ones in our sample, could be reduced by as much as \$3,200 per claim.

### **Managed Care**

Traditionally, workers' compensation and group health plans have distinguished between work-related and non-work-related illnesses and injuries. This can require two administrative systems, two separate insurance policies, and the inevitable "double dipping" that occurs when people can receive benefits from two separate systems for the same illness or injury. Managed care on a 24-hour basis can eliminate these extra costs and the costs to litigate whether the cause of an illness or injury is work-related or not. Most important, the cost containment advantages of managed care extend to all claims, not just non-occupational injuries and diseases, as is now generally the case. Many experts believe 24-hour care reduces the overall cost of providing medical care. State Insurance Commissioner John Garamendi proposed a plan in 1992 that would have combined not only workers' compensation and group medical insurance, but also the medical component of motor vehicle insurance. Governor Pete Wilson vetoed the plan as part of a comprehensive health insurance bill in October 1992.

Managed care is also being considered at the federal level. In effect, the federal plan would achieve "around-the-clock" health coverage under one system. The Clinton administration proposes to merge workers' compensation and medical components of motor vehicle and business liability insurance into a revamped national health care system the White House is designing. So far, there are no details on how a restructured workers' compensation plan would work.

The process of combining the two coverages involves overcoming numerous obstacles and raises several complicated legal and social questions. Some insist that there is no way to know whether in the long run the cost savings actually will justify the difficulties of combining the two systems.

In addition, unions and trial lawyers strongly oppose the concept. Other problems must also be overcome. For example, the co-payments and deductibles common with health care plans may not be appropriate for workers' compensation. In addition, some feel the current focus in workers' compensation on rehabilitation and loss prevention would be lost under 24-hour care, since claims would be based on non-occupational issues beyond the control of employers.

On the legislative side, workers' compensation is highly regulated, which is not the case with group medical insurance. The state now sets rates and benefits for workers' compensation, but not for group medical insurance.

Moreover, many experts are unsure how the "exclusive remedy" doctrine in workers' compensation law would be affected under a truly blended plan. Under this doctrine, employees give up their right to sue an employer for work-related injuries in exchange for unlimited coverage of those injuries and illnesses. This option could be lost under the 24-hour plan. In addition, the deductibles and co-payments common to health care plans would negate the "first dollar" coverage historically provided under workers' compensation law.

#### Pilot For 24-Hour Managed Care

New California legislation provides for a special pilot program testing 24-hour managed care in four counties including Santa Clara. Under this program, employers will be able to direct the medical care of injured or ill employees for one

year instead of 30 days, as is now the case. Many feel this will reduce workers' compensation costs considerably and prevent the "doctor shopping" currently taking place with some injured workers.

According to the Director of Self-Insured Plans, no entity in the four counties has opted for the pilot so far. However, an October 1993 article in Business Insurance outlined a pilot program in Florida that directed workers' compensation cases to a health management organization that cut costs by as much as 38.5 percent.

### **Benefits Increases**

A study published in March 1993 in Business Insurance found that California's workers' compensation system was bad for both employers and injured employees because it provided low benefits and high costs between 1986 and 1989. Ranked with other states, California is sixth in workers' compensation costs and thirty-sixth in workers' compensation payments to claimants. California's maximum weekly benefit for temporary total disability in 1991 was \$336, which is 70 percent less than California's average weekly wage.

Increased benefits for injured workers were a large portion of the reform package. While some reform areas may result in cost savings for the City, the increase in benefits paid on workers' compensation claims will inevitably increase costs. The following table shows the mandated increase in costs for temporary disability, permanent disability, life pension, and death benefits.

**TABLE X**  
**STATE-MANDATED WORKERS' COMPENSATION**  
**BENEFITS INCREASES**  
(Benefits Paid Weekly)

		<b>For Claims Filed On Or After July 1</b>			
	<b>Maximum As of June 30, 1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>Total Increase From July 1993 To 1996</b>
<b><i>Temporary Disability</i></b>	\$336	\$406	\$448	\$490	46%
<b><i>Permanent Disability</i></b>					
<u><b>Rating</b></u>					
Up to 14.75%	\$140	\$140	\$140	\$140	0%
15% to 24.75%	\$140	\$148	\$154	\$160	14%
25% to 69.75%	\$148	\$158	\$164	\$170	15%
70% to 99.75%	\$148	\$168	\$198	\$230	55%
<b><i>Life Pension</i></b>	\$64.21	\$94.02	\$123.84	\$153.65	139%
<b><i>Death Benefit</i></b>					
One surviving dependent	\$95,000	\$115,000	\$115,000	\$125,000	32%
Two surviving dependents	\$115,000	\$135,000	\$135,000	\$145,000	26%
Three or more	\$115,000	\$150,000	\$150,000	\$160,000	39%

Permanent Disability

Under the California system, permanent disability is expressed in terms of a rating which is a percentage of total disability, the total being 100 percent. In rating permanent disability, consideration is given to the nature of the injury, occupation and age at time of injury, and diminished ability to compete in an open labor market. The State of California, Department of Industrial Relations, Division of Industrial Accidents, compiles and publishes the Schedule for Rating Permanent

Disabilities under the provisions of California's Labor Code. Permanent disability benefits are paid in addition to temporary compensation. The schedule provides the number of weeks of disability to be paid according to the percentage of total disability.

As shown in Table X, due to the mandated increases, we will see payments on permanent disability claims increase 14 percent, 15 percent, and 55 percent, respectively, over the next three years. For example, for a permanent disability award with a disability rating of 38 percent, weekly benefit payments increase from \$148 to \$158, \$164, and \$170 over the next three years, equating to total payouts of \$26,663, \$27,675, and \$28,688, respectively. This is a percentage increase of 7 percent in the first year and 4 percent in each of the next two years for a total increase of 15 percent in the payments from 1993 to 1996.

The Workers' Compensation Program began keeping a settlement log in January 1993. According to the log, there were permanent disability settlements on 41 claims with ratings from 15 percent to 24.75 percent, 42 claims with ratings from 25 percent to 69.75 percent, and one permanent disability settlement for a claim rated over 70 percent. If the number of permanent disability claims with ratings of 25 percent to 69.75 percent logged in 1993 was held constant, the City would pay \$77,650 more if these claims were filed in 1994, \$124,240 more if filed in 1995, and \$170,830 more if filed in 1996. This also translates to an average payment increase per claim of approximately \$1,850, \$3,000, and \$4,000, in 1994, 1995, and 1996, respectively.

### Life Pension

The City currently has only 14 life pension claims in the system. Therefore, no significant cost increases are expected here.

### Death Benefit

The City had 12 death benefit claims from January 1, 1990, through March 21, 1994. Death benefits will increase in 1994 and again in 1996. The Workers' Compensation Manager informed us that we often are able to negotiate a settlement amount that is less than the total benefit allowed by law. For example, while state law allowed payments to an employee's dependent of \$70,000 plus \$2,000, Risk Management negotiated a payment of \$66,641, or \$5,359 less than the law allowed.

### *Cal-OSHA Standard*

In the last decade, cumulative trauma disorders (CTDs) have become the costliest and fastest growing health and safety problem in the workplace. They are caused by repetitive tasks, such as typing, and now account for 61 percent of all occupational illnesses nationally, up from 18 percent in 1980.

The California State Legislature directed Cal-OSHA to adopt an ergonomic standard to prevent CTDs by January 1, 1995. The standard will be phased in over a three-year period and will affect all California companies. The standard outlines a systematic approach to injury prevention that would apply to all industries. San Jose will be obliged to implement the following to be in compliance:



**Preliminary Information Gathering.** Employers must conduct a one-time review of medical, safety, and workers' compensation records going back three years for evidence of symptoms or CTD risks. Employers must also start a program to encourage workers to report symptoms or risks without fear of reprisal or discrimination.

**Work Site Evaluation.** Employers must systematically evaluate work conditions and schedule needed changes if an employee reports symptoms or risks or if there is evidence that a risk or injury exists.

**Control Measures.** Employers must modify equipment or work tasks as necessary to eliminate or reduce health risks. For video display terminal operators who perform repetitive keyboard work for four or more hours daily, Cal-OSHA recommends adjustable chairs, document holders, and changes to the workstation to make sure that good ergonomic procedures are followed.

**Medical Management.** To detect and analyze symptoms, employers must provide free medical evaluations when feasible, report on the employee's fitness for work, and recommend changes. In some cases, employers must pay for eye examinations and eyeglasses.

**Training.** General training on the symptoms, risk factors, and consequences of CTDs must be provided to all employees. Workers must also receive an explanation of safe work methods as well as information on how to report symptoms. Job-specific training will be provided to workers identified as facing CTD risk.

## **CONCLUSION**

The recent California workers' compensation legislative reform may reduce some City workers' compensation costs but increase others. The City may realize some cost savings from reductions in medical-legal expenses, but will pay more for benefit increases (permanent disability claims in particular.) In addition, compliance with the ergonomics standard and other state-mandated programs will require time, coordinated efforts, and funding.

**[Click On The Appropriate Box To View Item](#)**

**Administrator's Response**

**Appendix A**

**Appendix B**

**Appendix C**

**Appendix D**

**Appendix E**

**Appendix F**